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April 20, 2005

**VIA ELECTRONIC FILING & HAND DELIVERY**

Ms. Michelle Carey  
Deputy Chief, Wireline Competition Bureau  
Federal Communications Commission  
The Portals  
445 12<sup>th</sup> Street, S.W.  
Washington, D.C. 20554

Re: WC Docket No. 04-313; CC Docket No. 01-338;  
In the Matter of Unbundled Access to Network Elements, Review of the Section  
251 Unbundling Obligations of Incumbent Local Exchange Carriers; Triennial  
Review Order on Remand ("TRRO")

Dear Ms. Carey:

I am writing on behalf of XO Communications, Inc. ("XO"). As you may recall, on March 7, 2005, we filed a letter with the Commission highlighting how SBC Telecommunications, Inc. ("SBC") had failed to engage XO in the good faith negotiations required by the TRRO in order to implement the Commission's new rules. We now unfortunately face the same techniques from Verizon. Verizon has refused to negotiate the requisite ICA Amendments to implement the new Commission directives in the TRRO, rather claiming that such rules are essentially self-effectuating and require no such Amendment.<sup>1</sup> Indeed, as you are well aware, the TRRO requires that CLECs and ILECs undertake all necessary steps to in good faith amend their existing interconnection agreements ("ICA") in order to implement the changes reflected in the TRRO. In addition, the Commission provided a transition period of either 12 or 18 months, depending on the affected UNE, in order to implement such ICA changes and to transition off all UNEs that are no longer available. Unfortunately, like SBC, Verizon has also taken it upon itself to ignore the clear directive of the Commission by unilaterally implementing its view of the TRRO without the good faith negotiation the Commission made clear is required. As we did in our letter to you regarding SBC, we now outline the actions Verizon has taken to also thwart XO's efforts to seamlessly comply with Commission directives to ensure the smooth transition of our customers to alternative service arrangements for affected UNEs.

On February 18, 2005, XO sent written requests to Verizon enter into good faith negotiations to amend our ICAs in Verizon's territory to incorporate the rule changes necessitated by the TRRO. See XO Request Letters dated February 18, 2005, attached hereto as Exhibit A. On March 4, 2005, Verizon responded to such requests claiming that except in very limited circumstances, Verizon was not required to enter into good faith negotiations with XO to implement the TRRO rule changes, and that, with respect to the matters addressed by the TRRO, the parties' existing negotiated ICA terms no longer applied. See Verizon Response Letter dated March 8, 2005, attached hereto as Exhibit B. We have attempted to show Verizon the error of its ways by pointing out the Commission's clear requirements to follow the

<sup>1</sup> In some states, Verizon was permitted to modify its wholesale tariffs to implement the TRRO without negotiation or amending the ICA.

KELLEY DRYE & WARREN LLP

Ms. Michelle Carey  
April 20, 2005  
Page 2 of 3

change of law provisions in the ICAs in effect between the two companies. See XO Response Letter dated March 7, 2005, attached hereto as Exhibit C. However, Verizon has shown that it is not truly interested in following the law as written, but rather only its erroneous interpretation of the law, not surprisingly an interpretation that most benefits it.

Verizon's blatant disregard of Commission direction is evidenced simply and clearly by Verizon's own written words as set forth in its Response Letter:

"The TRRO and the FCC's implementing regulations bar CLECs from ordering new Discontinued Facilities as of the effect date of the order, *irrespective of the terms of existing Section 252 interconnection agreements.*"

(emphasis added). Indeed, Verizon makes no attempt to hide its strategy to thwart XO's attempts to fully comply with the TRRO and to ensure a seamless transition of its customers off affected elements. In the TRRO, the Commission required ILECs and CLECs to, in good faith, amend their ICAs to incorporate the Commission's most recent rule changes. Specifically, ¶ 233 of the TRRO clearly states that:

"[the Commission] expect[s] that incumbent LECs and competing carriers will implement the Commission's findings as directed by Section 252 of the Act. Thus, carriers *must implement changes to their interconnection agreements* consistent with our conclusions in this Order"

(emphasis added and footnotes omitted). The Commission elaborates on this obligation by stating that "the incumbent LEC and competitive LEC *must* negotiate in good faith regarding *any rates, terms, and conditions* necessary to implement our rule changes" (emphasis added and footnotes omitted).

The Commission further clarified in the TRRO that parties were to rely on the ICA amendment process to incorporate its changes, including all transitional provisions, explicitly referencing carriers' use of the change of law provisions in their ICAs. Indeed, the Commission emphasized that "carriers have twelve months from the effective date of this Order to *modify their interconnection agreements*, including completing any change of law processes." See TRRO ¶¶ 143 and 196. Verizon's position that the rule changes promulgated by the Commission in the TRRO are self effectuating, and that XO is required to enter into the Verizon form ICA amendment by April 3, 2005, just 24 days after the effective date of the TRRO, and almost a year prior to the date authorized under the TRRO, is clearly without basis and wholly inconsistent with TRRO ¶¶ 143 and 196. Verizon's position is further undermined by the language in TRRO ¶¶ 145 and 198, which state that

"the transition mechanism adopted here is *simply a default process*, and pursuant to Section 252(a)(1), *carriers remain free to negotiate alternative arrangements* superseding this transition period. The transition mechanism also does not replace or supersede any commercial arrangements carriers have reached for the continued provision of . . . facilities or services."

Verizon's contentions that it can unilaterally implement the transitional provisions set forth in the TRRO fly in the face of this Commission construct, which by its clear terms allows for the replacement of the stated transition mechanism with terms negotiated or arbitrated between the parties. This Commission construct clearly contemplates nothing less than full bilateral negotiations between the parties of all "*rates, terms and conditions necessary to implement the [Commission's] rule changes.*" See TRRO ¶ 233 .

KELLEY DRYE & WARREN LLP

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April 20, 2005  
Page 3 of 3

It is also important to emphasize that the Commission explicitly elected to effectuate its rule changes through the ICA Amendment process, recognizing that these ICAs already provide for a mechanism for incorporating changes in the law, and that such changes will take some period of time to complete. The Commission has aptly embraced these change of law mechanisms by requiring carriers to follow their own negotiated processes in order to give effect to the new Commission rules. Also recognized by the Commission decision is the fact that until the change of law process, and resulting negotiations, are completed, albeit within the time frames prescribed in the TRRO, the ICA terms and conditions as previously negotiated and agreed by the respective parties must continue to govern without interruption or alteration.

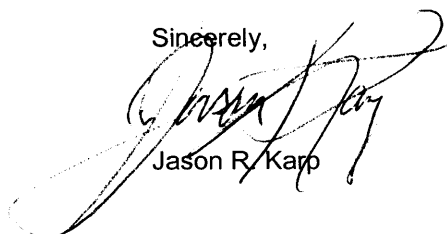
The TRRO does not create exceptions to this premise or unilaterally permit Verizon to pick and choose which of the Commission rule changes must be incorporated into its ICA with XO and which it can unilaterally implement without negotiation or discussion. Similarly, nothing in the TRRO permits Verizon to breach its ongoing obligations to XO in its ICAs. These positions, taken by Verizon, violate the clear directives of the TRRO. As such, Verizon should not be allowed to circumvent the very terms it negotiated with XO in direct contravention of Commission rules simply because it feels it would benefited by doing so. The Commission has explicitly set forth a process to incorporate its new rule changes into existing ICAs, and Verizon must be made to follow that procedure.

Therefore, we now respectfully request that the Bureau take whatever steps are necessary to ensure Verizon complies with the clear directives of the Commission in the TRRO. Verizon must not be permitted to steamroll XO, ignoring the process the FCC put in place, thereby placing XO and its customers in further jeopardy. Conversely, XO has no interest in unreasonably delaying the complete implementation of the Commission's rules. On the contrary, it is XO's hope to quickly and smoothly implement all required rule changes so that its customers can be seamlessly transitioned to new service arrangements where necessary and without interruption. Indeed, as referenced above, XO has already sent requests to Verizon for negotiation of the necessary amendments to their ICAs, as well as a request for the business line and fiber-based collocators counts to support Verizon's Tier 1, Tier 2, and Tier 3 wire center determinations. Despite XO's good faith requests consistent with the process set forth in the TRRO, however, Verizon continues to refuse to engage XO in good faith negotiations. Verizon's blatant refusal to work with XO in good faith to implement the provisions of the TRRO must not be tolerated. Verizon's actions again demonstrate its bad faith as it continues to place unreasonable and inappropriate impediments in the way of its competitors, and in violation of application federal rules. Just as is the case with SBC, after more than 9 years of delays and excuses, it is time for Verizon to fulfill its obligations as required by clear Commission order.

As we stated in our letter to you regarding SBC, this is a tenuous time for small and mid-sized competitive telecommunications carriers, with new mega mergers and consolidations announced almost weekly, and large carriers continuing to dominate the marketplace. It is thus imperative that ILECs, like Verizon, be required to comply with the law so competitive LECs can have the certainty they need to ensure uninterrupted, cost effective, quality service to their customers.

Thank you in advance for your prompt attention to this matter.

Sincerely,



Jason R. Karp

## EXHIBIT A

February 18, 2005

**VIA OVERNIGHT MAIL**

SBC Contract Administration

ATTN: Notices Manager  
 311 S. Akard, 9<sup>th</sup> Floor  
 Four Bell Plaza  
 Dallas, TX 75202-5398

Attached are separate notices from XO Communications Services, Inc. requesting SBC begin good-faith negotiations under Section 252 of the 1996 Telecom Act directed toward reaching a mutually agreeable ICA amendment that fully and properly implements the changes that have occurred as a result of the *Triennial Review Remand Order*, and to the extent necessary the *Triennial Review Order*. Attached are individual notices from XO Communications Services, Inc., on behalf of and/or as successor in interest to:

XO Illinois, Inc.	Allegiance Telecom of Illinois, Inc.	Coast to Coast Telecommunications, Inc.
XO Michigan, Inc.	Allegiance Telecom of Michigan, Inc.	
XO Ohio, Inc.	Allegiance Telecom of Ohio, Inc.	
XO Texas, Inc.	Allegiance Telecom of Texas, Inc.	
XO Missouri, Inc.	Allegiance Telecom of Missouri, Inc.	
XO California, Inc.	Allegiance Telecom of California, Inc.	
XO Indiana, Inc.		
XO Wisconsin, Inc.		
XO Oklahoma, Inc.		
XO Arkansas, Inc.		
XO Kansas, Inc.		
XO Connecticut, Inc.		
XO California, Inc.		

XO Communications, Inc.

11111 Sunset Hills Road  
Reston, VA 20190  
USA

February 18, 2005

**VIA OVERNIGHT MAIL**SBC Contract Administration  
ATTN: Notices Manager  
311 S. Akard, 9<sup>th</sup> Floor  
Four Bell Plaza  
Dallas, TX 75202-5398

On February 4, 2005, the Federal Communications Commission ("FCC") released the text of its Order on Remand in *In the Matter of Review of the Section 251 Unbundling Obligations of Incumbent Local Exchange Carriers*, CC Docket No. 01-338 (*Triennial Review Remand Order*). The rules adopted in the *Triennial Review Remand Order* constitute a change in law under the current interconnection agreement ("ICA") between XO<sup>1</sup> and Pacific Bell Telephone Company d/b/a SBC California ("SBC"). Pursuant to Section 2.1 of the Second Amendment Superseding Certain Intervening Law, Compensation, Interconnection and Trunking Provisions of that ICA, formal written notice is required to begin the process of entering into negotiations to arrive at an amendment to implement into the ICA the FCC's determinations in the *Triennial Review Remand Order*.

Accordingly, we hereby provide this notice, and request that SBC begin good-faith negotiations under Section 252 of the 1996 Telecom Act directed toward reaching a mutually agreeable ICA amendment that fully and properly implements the changes that have occurred as a result of the *Triennial Review Remand Order*. We intend that the negotiations will include the effect of any independent state authority to order unbundling on SBC's ongoing obligation to provide access to certain unbundled network elements.

XO notes that, pursuant to Section 2.1 of the Second Amendment Superseding Certain Intervening Law, Compensation, Interconnection and Trunking Provisions of the current ICA and paragraph 233 of the *Triennial Review Remand Order*, the existing terms of the parties' ICA continue in effect until such time as the Parties have executed a written amendment to the ICA. As such, XO expects that both it and SBC will continue to honor all terms and conditions of the current interconnection agreement until such time as a written amendment is executed.

---

<sup>1</sup> "XO," for purposes of this notice, refers to XO Communications Services, Inc., on behalf of and/or as successor in interest to XO California, Inc.



The main company contact for these negotiations is:

Gegi Leeger  
Director Regulatory Contracts  
11111 Sunset Hills Road  
Reston, VA 20190  
703-547-2109 voice  
703-547-2300 facsimile  
Email: [gegi.leeger@xo.com](mailto:gegi.leeger@xo.com)

Please initiate the internal processes within SBC that will facilitate this request, and respond to this letter as expeditiously as possible with written acknowledgement of your receipt so that we may begin the negotiation process.

Further, in order to timely incorporate the *Triennial Review Remand Order's* rules into our revised interconnection agreement, the wire centers in your operating areas that satisfy the Tier 1, Tier 2, and Tier 3 criteria for dedicated transport and DS1 and DS3 loops must be identified and verified. Accordingly, XO hereby requests that SBC provide all backup data necessary to verify the number of lines and the identity of the fiber-based collocators by end office for each end office that SBC claims fall within each tier as those tiers are defined in the *Triennial Review Remand Order*. This data should be provided by no later than Friday, February 25, 2005.

Sincerely,

A handwritten signature in black ink, appearing to read 'Gegi Leeger', written over the printed name and title.

Gegi Leeger  
Director Regulatory Contracts

XO Communications, Inc.

11111 Sunset Hill Road  
Reston, VA 20190  
USA

February 18, 2005

**VIA OVERNIGHT MAIL**SBC Contract Administration  
ATTN: Notices Manager  
311 S. Akard, 9<sup>th</sup> Floor  
Four Bell Plaza  
Dallas, TX 75202-5398

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Accordingly, we hereby provide this notice, and request that SBC begin good-faith negotiations under Section 252 of the 1996 Telecom Act directed toward reaching a mutually agreeable ICA amendment that fully and properly implements the changes that have occurred as a result of the *Triennial Review Remand Order*. In addition, formal notice is hereby being given for purposes of again commencing negotiations on the changes in law implemented by the *Triennial Review Order* that were unaffected by the *Triennial Review Remand Order*.<sup>2</sup> We intend that the negotiations will include the effect of section 271 of the 1996 Telecom Act on SBC's ongoing obligation to provide access to certain unbundled network elements, as well as independent state authority to order unbundling.

<sup>1</sup> "XO," for purposes of this notice, refers to XO Communications Services, Inc., on behalf of and/or as successor in interest to XO Wisconsin, Inc.

<sup>2</sup> The inclusion of changes in law implemented by the *Triennial Review Order* in this request should not be construed as a waiver of any right XO may have, and XO hereby reserves all such rights, to seek immediate relief for SBC's continued refusal, after months of negotiation between the parties, to implement those provisions of the TRO not affected by appeal or vacatur.





XO notes that, pursuant to Section 2.1 of the Second Amendment Superseding Certain Intervening Law, Compensation, Interconnection and Trunking Provisions of the current ICA and paragraph 233 of the *Triennial Review Remand Order*, the existing terms of the parties' ICA continue in effect until such time as the Parties have executed a written amendment to the ICA. As such, XO expects that both it and SBC will continue to honor all terms and conditions of the current interconnection agreement until such time as a written amendment is executed.

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Reston, VA 20190  
703-547-2109 voice  
703-547-2300 facsimile  
Email: [gegi.leeger@xo.com](mailto:gegi.leeger@xo.com)

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Further, in order to timely incorporate the *Triennial Review Remand Order's* rules into our revised interconnection agreement, the wire centers in your operating areas that satisfy the Tier 1, Tier 2, and Tier 3 criteria for dedicated transport and DS1 and DS3 loops must be identified and verified. Accordingly, XO hereby requests that SBC provide all backup data necessary to verify the number of lines and the identity of the fiber-based collocators by end office for each end office that SBC claims fall within each tier as those tiers are defined in the *Triennial Review Remand Order*. This data should be provided by no later than Friday, February 25, 2005.

Sincerely,

A handwritten signature in cursive script that reads 'Gegi Leeger'.

Gegi Leeger  
Director Regulatory Contracts

XO Communications, Inc.

11111 Sunset Hills Road  
Reston, VA 20190  
USA

February 18, 2005

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<sup>1</sup> "XO," for purposes of this notice, refers to XO Communications Services, Inc., on behalf of and/or as successor in interest to Allegiance Telecom of California, Inc.

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XO™

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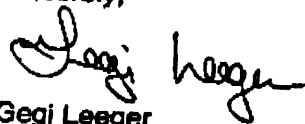
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Further, in order to timely incorporate the *Triennial Review Remand Order's* rules into our revised interconnection agreement, the wire centers in your operating areas that satisfy the Tier 1, Tier 2, and Tier 3 criteria for dedicated transport and DS1 and DS3 loops must be identified and verified. Accordingly, XO hereby requests that SBC provide all backup data necessary to verify the number of lines and the identity of the fiber-based collocators by end office for each end office that SBC claims fall within each tier as those tiers are defined in the *Triennial Review Remand Order*. This data should be provided by no later than Friday, February 25, 2005.

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Gegi Leeger  
Director Regulatory Contracts

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11111 Sunset Hills Road  
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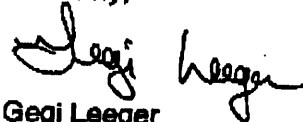
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Further, in order to timely incorporate the *Triennial Review Remand Order's* rules into our revised interconnection agreement, the wire centers in your operating areas that satisfy the Tier 1, Tier 2, and Tier 3 criteria for dedicated transport and DS1 and DS3 loops must be identified and verified. Accordingly, XO hereby requests that SBC provide all backup data necessary to verify the number of lines and the identity of the fiber-based collocators by end office for each end office that SBC claims fall within each tier as those tiers are defined in the *Triennial Review Remand Order*. This data should be provided by no later than Friday, February 25, 2005.

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<sup>1</sup> "XO," for purposes of this notice, refers to XO Communications Services, Inc., on behalf of and/or as successor in interest to Allegiance Telecom of Michigan, Inc.

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Gegi Leeger  
Director Regulatory Contracts

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USA

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Four Bell Plaza  
Dallas, TX 75202-6398

On February 4, 2005, the Federal Communications Commission ("FCC") released the text of its Order on Remand in *In the Matter of Review of the Section 251 Unbundling Obligations of Incumbent Local Exchange Carriers*, CC Docket No. 01-338 ("Triennial Review Remand Order"). The rules adopted in the *Triennial Review Remand Order* constitute a change in law under the current interconnection agreement ("ICA") between XO<sup>1</sup> and Southwestern Bell Telephone, L.P. d/b/a SBC Missouri ("SBC"). Pursuant to Section 2.1 of the Second Amendment Superseding Certain Intervening Law, Compensation, Interconnection and Trunking Provisions of that ICA, formal written notice is required to begin the process of entering into negotiations to arrive at an amendment to implement into the ICA the FCC's determinations in the *Triennial Review Remand Order*.

Accordingly, we hereby provide this notice, and request that SBC begin good-faith negotiations under Section 252 of the 1996 Telecom Act directed toward reaching a mutually agreeable ICA amendment that fully and properly implements the changes that have occurred as a result of the *Triennial Review Remand Order*. In addition, formal notice is hereby being given for purposes of again commencing negotiations on the changes in law implemented by the *Triennial Review Order* that were unaffected by the *Triennial Review Remand Order*.<sup>2</sup> We intend that the negotiations will include the effect of section 271 of the 1996 Telecom Act on SBC's ongoing obligation to provide access to certain unbundled network elements, as well as independent state authority to order unbundling.

<sup>1</sup> "XO," for purposes of this notice, refers to XO Communications Services, Inc., on behalf of and/or as successor in interest to Allegiance Telecom of Missouri, Inc.

<sup>2</sup> The inclusion of changes in law implemented by the *Triennial Review Order* in this request should not be construed as a waiver of any right XO may have, and XO hereby reserves all such rights, to seek immediate relief for SBC's continued refusal, after months of negotiation between the parties, to implement those provisions of the TRO not affected by appeal or vacatur.



XO™

XO notes that, pursuant to Section 2.1 of the Second Amendment Superseding Certain Intervening Law, Compensation, Interconnection and Trunking Provisions of the current ICA and paragraph 233 of the *Triennial Review Remand Order*, the existing terms of the parties' ICA continue in effect until such time as the Parties have executed a written amendment to the ICA. As such, XO expects that both it and SBC will continue to honor all terms and conditions of the current interconnection agreement until such time as a written amendment is executed.

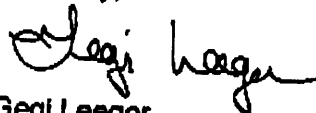
The main company contact for these negotiations is:

Gegi Leeger  
Director Regulatory Contracts  
11111 Sunset Hills Road  
Reston, VA 20190  
703-547-2109 voice  
703-547-2300 facsimile  
Email: gegi.leeger@xo.com

Please initiate the internal processes within SBC that will facilitate this request, and respond to this letter as expeditiously as possible with written acknowledgement of your receipt so that we may begin the negotiation process.

Further, in order to timely incorporate the *Triennial Review Remand Order's* rules into our revised interconnection agreement, the wire centers in your operating areas that satisfy the Tier 1, Tier 2, and Tier 3 criteria for dedicated transport and DS1 and DS3 loops must be identified and verified. Accordingly, XO hereby requests that SBC provide all backup data necessary to verify the number of lines and the identity of the fiber-based collocators by end office for each end office that SBC claims fall within each tier as those tiers are defined in the *Triennial Review Remand Order*. This data should be provided by no later than Friday, February 25, 2005.

Sincerely,



Gegi Leeger  
Director Regulatory Contracts

XO Communications, Inc.

11111 Sunset Hills Road  
Reston, VA 20190  
USA

February 18, 2005

**VIA OVERNIGHT MAIL**SBC Contract Administration  
ATTN: Notices Manager  
311 S. Akard, 9<sup>th</sup> Floor  
Four Bell Plaza  
Dallas, TX 75202-5398

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XO™

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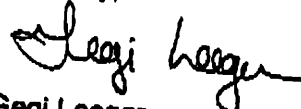
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Sincerely,



Gegi Leeger  
Director Regulatory Contracts

XO Communications, Inc.

11111 Sunset Hills Road  
Reston, VA 20190  
USA

February 18, 2005

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SBC Contract Administration  
ATTN: Notices Manager  
311 S. Akard, 9<sup>th</sup> Floor  
Four Bell Plaza  
Dallas, TX 75202-5398

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XO™

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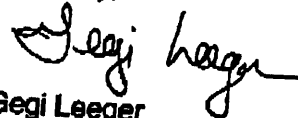
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Sincerely,



Gegi Leeger  
Director Regulatory Contracts

XO Communications, Inc.

11111 Sunset Hill Road  
Reston, VA 20190  
USA

XO™

February 18, 2005

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ATTN: Notices Manager  
311 S. Akard, 9<sup>th</sup> Floor  
Four Bell Plaza  
Dallas, TX 75202-5398

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XO™

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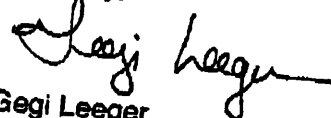
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11111 Sunset Hills Road  
Reston, VA 20190  
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703-547-2300 facsimile  
Email: [gegi.leeger@xo.com](mailto:gegi.leeger@xo.com)

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Sincerely,



Gegi Leeger  
Director Regulatory Contracts

XO Communications, Inc.

11111 Sunset Hills Road  
Reston, VA 20190  
USA

February 18, 2005

**VIA OVERNIGHT MAIL**SBC Contract Administration  
ATTN: Notices Manager  
311 S. Akard, 8<sup>th</sup> Floor  
Four Bell Plaza  
Dallas, TX 75202-5398

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XO™

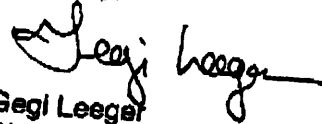
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Sincerely,



Gegi Leeger  
Director Regulatory Contracts

XO Communications, Inc.

11111 Sunset Hills Road  
Reston, VA 20190  
USA

XO™

February 18, 2005

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ATTN: Notices Manager  
311 S. Akard, 9<sup>th</sup> Floor  
Four Bell Plaza  
Dallas, TX 75202-5398

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The XO logo consists of a large, stylized 'X' followed by a large 'O' with a small trademark symbol (TM) to its upper right.

XO notes that, pursuant to Section 2.1 of the Second Amendment Superseding Certain Intervening Law, Compensation, Interconnection and Trunking Provisions of the current ICA and paragraph 233 of the *Triennial Review Remand Order*, the existing terms of the parties' ICA continue in effect until such time as the Parties have executed a written amendment to the ICA. As such, XO expects that both it and SBC will continue to honor all terms and conditions of the current interconnection agreement until such time as a written amendment is executed.

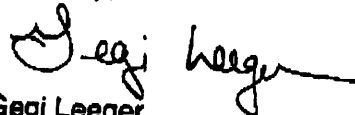
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Sincerely,

A handwritten signature in black ink that reads 'Gegi Leeger'.

Gegi Leeger  
Director Regulatory Contracts

XO Communications, Inc.

11111 Sunset Hills Road  
Reston, VA 20190  
USA

XO™

February 18, 2005

**VIA OVERNIGHT MAIL**

SBC Contract Administration  
ATTN: Notices Manager  
311 S. Akard, 9<sup>th</sup> Floor  
Four Bell Plaza  
Dallas, TX 75202-5398

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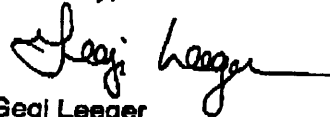
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Sincerely,

A handwritten signature in cursive script that reads "Gegi Leeger".

Gegi Leeger  
Director Regulatory Contracts

XO Communications, Inc.

11111 Sunset Hills Road  
Reston, VA 20190  
USA

February 18, 2005

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311 S. Akard, 9<sup>th</sup> Floor  
Four Bell Plaza  
Dallas, TX 75202-5398

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XO™

XO notes that, pursuant to Section 2.1 of the Second Amendment Superseding Certain Intervening Law, Compensation, Interconnection and Trunking Provisions of the current ICA and paragraph 233 of the *Triennial Review Remand Order*, the existing terms of the parties' ICA continue in effect until such time as the Parties have executed a written amendment to the ICA. As such, XO expects that both it and SBC will continue to honor all terms and conditions of the current interconnection agreement until such time as a written amendment is executed.

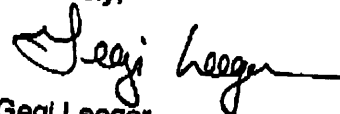
The main company contact for these negotiations is:

Gegi Leeger  
Director Regulatory Contracts  
11111 Sunset Hills Road  
Reston, VA 20190  
703-547-2109 voice  
703-547-2300 facsimile  
Email: [gegi.leeger@xo.com](mailto:gegi.leeger@xo.com)

Please initiate the internal processes within SBC that will facilitate this request, and respond to this letter as expeditiously as possible with written acknowledgement of your receipt so that we may begin the negotiation process.

Further, in order to timely incorporate the *Triennial Review Remand Order's* rules into our revised interconnection agreement, the wire centers in your operating areas that satisfy the Tier 1, Tier 2, and Tier 3 criteria for dedicated transport and DS1 and DS3 loops must be identified and verified. Accordingly, XO hereby requests that SBC provide all backup data necessary to verify the number of lines and the identity of the fiber-based collocators by end office for each end office that SBC claims fall within each tier as those tiers are defined in the *Triennial Review Remand Order*. This data should be provided by no later than Friday, February 25, 2005.

Sincerely,



Gegi Leeger  
Director Regulatory Contracts

XO Communications, Inc.

11111 Sunset Hills Road  
Reston, VA 20190  
USA

February 18, 2005

**VIA OVERNIGHT MAIL**SBC Contract Administration  
ATTN: Notices Manager  
311 S. Akard, 9<sup>th</sup> Floor  
Four Bell Plaza  
Dallas, TX 75202-5398

On February 4, 2005, the Federal Communications Commission ("FCC") released the text of its Order on Remand in *In the Matter of Review of the Section 251 Unbundling Obligations of Incumbent Local Exchange Carriers*, CC Docket No. 01-338 ("*Triennial Review Remand Order*"). The rules adopted in the *Triennial Review Remand Order* constitute a change in law under the current interconnection agreement ("ICA") between XO<sup>1</sup> and Southwestern Bell Telephone, L.P. d/b/a SBC Kansas ("SBC"). Pursuant to Section 2.1 of the Second Amendment Superseding Certain Intervening Law, Compensation, Interconnection and Trunking Provisions of that ICA, formal written notice is required to begin the process of entering into negotiations to arrive at an amendment to implement into the ICA the FCC's determinations in the *Triennial Review Remand Order*.

Accordingly, we hereby provide this notice, and request that SBC begin good-faith negotiations under Section 252 of the 1996 Telecom Act directed toward reaching a mutually agreeable ICA amendment that fully and properly implements the changes that have occurred as a result of the *Triennial Review Remand Order*. In addition, formal notice is hereby being given for purposes of again commencing negotiations on the changes in law implemented by the *Triennial Review Order* that were unaffected by the *Triennial Review Remand Order*.<sup>2</sup> We intend that the negotiations will include the effect of section 271 of the 1996 Telecom Act on SBC's ongoing obligation to provide access to certain unbundled network elements, as well as independent state authority to order unbundling.

<sup>1</sup> "XO," for purposes of this notice, refers to XO Communications Services, Inc., on behalf of and/or as successor in interest to XO Kansas, Inc.

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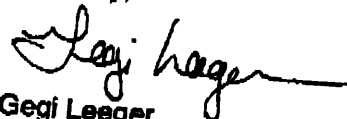
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Sincerely,



Gegi Leeger  
Director Regulatory Contracts

XO™

February 18, 2005

**VIA OVERNIGHT MAIL**

SBC Contract Administration  
ATTN: Notices Manager  
311 S. Akard, 9<sup>th</sup> Floor  
Four Bell Plaza  
Dallas, TX 75202-5398

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XO Communications, Inc.

11111 Sunset Hills Road  
Reston, VA 20190  
USA

XO

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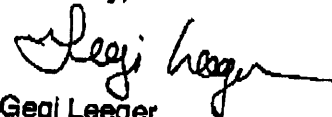
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February 18, 2005

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XO™

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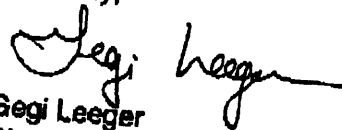
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11111 Sunset Hills Road  
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February 18, 2005

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311 S. Akard, 9<sup>th</sup> Floor  
Four Bell Plaza  
Dallas, TX 75202-5398

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Sincerely,

A handwritten signature of Gegi Leeger in black ink.

Gegi Leeger  
Director Regulatory Contracts

XO Communications, Inc.

11111 Sunset Hills Road  
Reston, VA 20190  
USA

February 18, 2005

**VIA OVERNIGHT MAIL**SBC Contract Administration  
ATTN: Notices Manager  
311 S. Akard, 9<sup>th</sup> Floor  
Four Bell Plaza  
Dallas, TX 75202-5398

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Sincerely,

A handwritten signature in cursive script, appearing to read 'Gegi Leeger'.

Gegi Leeger  
Director Regulatory Contracts

XO Communications, Inc.

11111 Sunset Hills Road  
Reston, VA 20190  
USA

February 18, 2005

**VIA OVERNIGHT MAIL**SBC Contract Administration  
ATTN: Notices Manager  
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Four Bell Plaza  
Dallas, TX 75202-5398

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XO<sup>TM</sup>

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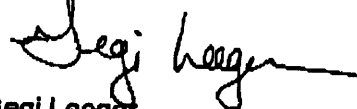
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Sincerely,



Gegi Leeger  
Director Regulatory Contracts

EXHIBIT B

EXHIBIT B

March 8, 2005

VIA OVERNIGHT MAIL

Anthony M. Black  
Assistant General Counsel  
Verizon  
1515 North Courthouse Road, Suite 500  
Arlington, VA 22201

Re: Verizon Response to XO February 18, 2005 Letters

Dear Mr. Black:

XO Communications, Inc. ("XO") appreciates Verizon's prompt response to XO's letters requesting negotiations to incorporate recent changes of federal law into the parties' interconnection agreements ("ICAs"). That response, however, is inconsistent with federal law and the ICAs, and XO provides the following reply to explain its position.

XO is well aware that Verizon has issued notices stating its intention unilaterally to implement Verizon's interpretation of the Triennial Review Remand Order ("TRRO"). Moreover, XO did respond to Verizon's February 10, 2005 notice. In its response, XO explained why Verizon's intended course of action, as outlined in Verizon's February 10, 2005 notice, violates the requirements of the TRRO. Contrary to your assertion, there is not a single word in the FCC's TRRO order that states that its implementing regulations bar CLECs from ordering new Discontinued Facilities . . . "irrespective of the terms of existing section 252 interconnection agreements." Indeed, Verizon's latest "self-help" proposal is fundamentally inconsistent with the TRRO requirement that "the incumbent LEC and competitive LEC must **negotiate in good faith** regarding any rates, terms, and conditions necessary to implement our rule changes." TRRO ¶ 233 (emphasis added). That Order, moreover, provides that "carriers have twelve months from the effective date of this Order **to modify their interconnection agreements**, including completing any change of law process." TRRO ¶¶ 143 & 196 (emphasis added). Indeed, the issue is not what Verizon's rights are or are not, but whether language reflecting those rights must be negotiated and if necessary arbitrated so that they are properly incorporated into interconnection agreements. Verizon thus is required to negotiate appropriate ICA amendment language to implement the provisions of the TRRO, not simply Verizon take unilateral action to implement such provisions without amending the ICA, as required.

As a result, XO's request for negotiations is *not* unnecessary, as you indicate. XO requested negotiations for ICA amendments that implement recent changes in federal law, including the FCC's Triennial Review Order ("TRO") and TRRO. The issues to be negotiated

are all contained in those orders. We will provide you with proposed contract language that addresses all of these issues shortly. XO has no intention of delaying timely implementation of the latest federal requirements, as Verizon has done with provisions of the TRO that do not benefit Verizon, but such timely implementation will require the cooperation of Verizon which, to date, has not been forthcoming.

Verizon's willful refusal to negotiate over language that incorporates the rights of the parties in light of the changes in law arising out of the TRO and TRRO comes at your own risk. XO intends to offer specific language reflecting its understanding of its legal rights. If Verizon refuses to negotiate over these terms, XO will seek arbitration and will seek to bar Verizon from offering any alternative language to that offered by XO that was not first presented by Verizon as part of the negotiation process.

Verizon's revisionist history of events since the FCC issued its TRO is a prime example of Verizon's recalcitrance. XO received Verizon's notices of that order and request for negotiation, and XO responded that XO, too, wished to engage in good faith negotiations. Verizon, however, refused to engage in such negotiations. Verizon instead filed for arbitration in every state where it had a telephone operating company. Verizon subsequently filed a motion to dismiss XO from certain state proceedings based on Verizon's erroneous interpretation of the change of law provisions in some of XO's interconnection agreements. In ruling on Verizon's motion, no state commission substantively agreed with Verizon's position that Verizon could unilaterally cease providing unbundled network elements without first negotiating an amendment to XO's interconnection agreement. Moreover, while the arbitration was pending, XO continued to negotiate an amendment with Verizon and continues to seek negotiation of appropriate contract language to implement requirements of both the TRO and the TRRO. XO certainly will work within the framework of existing proceedings, to the extent they exist, but that should not delay the parties' efforts to negotiate appropriate ICA amendments.

XO rejects Verizon's refusal to include Section 271 and state-required unbundled network elements ("UNEs") in the negotiations. Verizon's state unbundling requirements must be considered as long as those requirements are in effect. The plain language of Section 271 requires Verizon to provide certain UNEs pursuant to an ICA. 47 U.S.C. § 271(c)(2). Neither the availability of special access services under Verizon tariffs nor Verizon's so-called "commercial agreements" offered outside the section 252 process can satisfy Verizon's Section 271 obligations. Verizon's refusal to negotiate just and reasonable rates, terms, and conditions for these UNEs is further evidence of Verizon's continuing bad faith.

The most immediately troubling aspect of your letter is Verizon's anticipatory breach of the parties' ICAs by stating Verizon's intention to reject orders for UNEs that Verizon contends are to be under "the unconditional no-new-add directive ordered in the TRRO." The FCC would not have expressly required the rates, terms, and conditions in the TRRO be incorporated into ICAs if no amendment were necessary. Indeed, Verizon apparently recognizes the need for ICA amendments by proposing just such an amendment that "must be completed early enough within the transition period that the transition of the embedded base itself be completed before the transition period closes." Verizon's threatened refusal to comply with its lawful and effective ICAs will serve only to further delay appropriate implementation of the TRRO if XO must devote its limited resources to taking actions necessary to compel Verizon to comply with its ICAs.

XO will proceed as if Verizon intended to negotiate in good faith for ICA amendments to establish appropriate rates, terms, and conditions to implement the TRRO and other changes in federal law. If Verizon refuses to respond accordingly, XO will take the steps necessary to enforce its legal rights.

Sincerely,

Gegi Leeger

cc: Douglas Kinkoph  
Jeffrey A. Masoner



EXHIBIT C

XO Communications

11111 Sunset Hills Road  
Reston, VA 20190  
USA



RECEIVED - FCC

MAR - 7 2005

Federal Communication Commission  
Bureau / Office

March 7, 2005

Mr. Jeffrey Carlisle  
Chief, Wireline Competition Bureau  
Federal Communications Commission  
The Portals  
445 12<sup>th</sup> Street, S.W.  
Washington, D.C. 20554

Re: WC Docket No. 04-313; CC Docket No. 01-338;  
In the Matter of Unbundled Access to Network Elements, Review of the Section  
251 Unbundling Obligations of Incumbent Local Exchange Carriers; Triennial  
Review Order on Remand

Dear Mr. Carlisle:

I am writing on behalf of XO Communications, Inc. ("XO"). As you are well aware, the recent Order on Remand released in the above referenced Docket ("TRRO"), requires that CLECs and ILECs undertake all necessary steps to in good faith amend their existing interconnection agreements ("ICA") in order to implement the changes reflected in the TRRO. In addition, the Commission provided a transition period of either 12 or 18 months, depending on the affected UNE, in order to effectuate such ICA changes and transition off all de-listed UNEs. Unfortunately, SBC has taken it upon itself to ignore this clear directive of the Commission by unilaterally implementing its view of the TRRO without the good faith negotiation the Commission has made clear is required. Below we outline the unfortunate, albeit not unexpected, actions SBC has already taken in the short period of time since the TRRO was released to again thwart XO's efforts to seamlessly comply with Commission directives to ensure the smooth transition of their customers to alternative service arrangements for affected UNEs.

On or about February 11, 2005, SBC sent to XO Accessible Letter Numbers CLECALL05-019 and CLECALL05-020 ("*Accessible Letters*"), in which SBC claims, among other things, that

1. as of March 11, 2005, XO "may not place, and SBC will no longer provision New, Migration or Move Local Service Requests (LSRs) for affected elements", and that this directive is "*operative notwithstanding interconnection agreements or applicable tariffs*"; and
2. a signature-ready ICA Amendment, prepared solely by SBC, was made available as of February 21, 2005, which XO *should* "download, print, complete and return to SBC" by March 10, 2005.

See SBC Accessible Letters, attached hereto as Exhibit A (emphasis added). On February 18, 2005, XO sent (i) a letter to SBC rebutting SBC's positions in its Accessible Letters as violative of the TRRO, and (ii) written requests to enter into good faith negotiations to amend their ICAs in the SBC territory states to incorporate the rule changes necessitated by the TRRO. See XO Rebuttal Letter and XO Request Letters, attached hereto as Exhibits B and C, respectively. On February 24, 2005, SBC responded to the XO Rebuttal Letter, again refusing to enter into the good faith negotiations required by the TRRO. See



SBC Response Letter attached hereto as Exhibit D. Finally, just yesterday, on March 3, 2005, SBC issued another Accessible Letter Number CLECALL05-037, which invalidly restricts XO's ability to review and copy data related to Tier 1, Tier 2, and Tier 3 wire center business line and fiber-based collocators counts. See SBC Accessible Letters, attached hereto as Exhibit A.

SBC's blatant disregard of Commission direction is evidenced simply and clearly by SBC's own written words as set forth in the Accessible Letters:

**"The effect of the TRO Remand Order on New, Migration or Move LSRs for these affected elements is *operative notwithstanding interconnection agreements or applicable tariffs*"**

(emphasis added). SBC makes no attempt to hide its strategy to thwart XO's attempts to fully comply with the TRRO and to ensure a seamless transition of its customers off affected elements. In the TRRO, the Commission required ILECs and CLECs to, in good faith, amend their ICAs to incorporate the Commission's most recent rule changes. Specifically, ¶ 233 of the TRRO clearly states that "[the Commission] expect[s] that incumbent LECs and competing carriers will implement the Commission's findings as directed by Section 252 of the Act. Thus, carriers *must implement changes to their interconnection agreements consistent with our conclusions in this Order*" (emphasis added and footnotes omitted). The Commission elaborates on this obligation by stating that "the incumbent LEC and competitive LEC *must negotiate in good faith regarding any rates, terms, and conditions necessary to implement our rule changes*" (emphasis added and footnotes omitted). The TRRO does not create exceptions to this premise or unilaterally permit SBC to pick and choose which of the Commission rule changes must be incorporated into its ICA with XO and which it can unilaterally implement without negotiation or discussion. Such position is clearly violative of the TRRO.

The Commission further clarified in the TRRO that parties were to rely on ICA amendment process to incorporate its changes, including all transitional provisions, explicitly referencing carriers' use of the change of law provisions in their ICAs. Indeed, the Commission emphasized that "**carriers have twelve months from the effective date of this Order to *modify their interconnection agreements, including completing any change of law processes.***" See TRRO ¶¶ 143 and 196. SBC's position that the rule changes promulgated by the Commission in the TRRO are self effectuating, and that XO is required to enter into the SBC form ICA amendment by March 10, 2005, a day *before* the effective date of the TRRO, and more than one year prior to the date authorized under the TRRO, is clearly without basis and wholly inconsistent with TRRO ¶¶ 143 and 196. SBC's position is further undermined by the language in TRRO ¶¶ 145 and 198, which state that

**"the transition mechanism adopted here is *simply a default process*, and pursuant to Section 252(a)(1), *carriers remain free to negotiate alternative arrangements superseding this transition period. The transition mechanism also does not replace or supersede any commercial arrangements carriers have reached for the continued provision of . . . facilities or services.*"**

SBC's contentions that it can unilaterally implement the transitional provisions set forth in the TRRO fly in the face of this Commission construct, which by its clear terms allows for the replacement of the stated transition mechanism with terms negotiated or arbitrated between the parties. This Commission construct clearly contemplates nothing less than full bilateral negotiations between the parties of all "***rates, terms and conditions necessary to implement the [Commission's] rule changes.***" See TRRO ¶ 233 (emphasis added).

It is also important to emphasize that the Commission explicitly elected to effectuate its rule changes through the ICA Amendment process, recognizing that these ICAs already provide for a mechanism for incorporating changes in the law, and that such changes will take some period of time to



complete. The Commission has aptly embraced these change of law mechanisms by requiring carriers to follow their own negotiated processes in order to give effect to the new Commission rules. Also recognized by the Commission decision is that until the change of law process, and resulting negotiations, are completed, albeit within the time frames prescribed in the TRRO, the ICA terms and conditions as previously negotiated and agreed by the respective parties must continue to govern without interruption or alteration. As such, SBC cannot now attempt to circumvent the very terms it negotiated with XO in direct contravention of Commission rules simply because it feels it would benefited by doing so. The Commission has explicitly set forth a process to incorporate its new rule changes into existing ICAs, and SBC must be made to follow that procedure.

As such, we now respectfully request that the Bureau take whatever steps are necessary to ensure SBC complies with the clear directives of the Commission in the TRRO. SBC must not be permitted to steamroll this process, placing XO and its customers in further jeopardy. Conversely, XO has no interest in unreasonably delaying the complete implementation of the Commission's rules. Quite to the contrary, it is XO's hope to quickly and smoothly implement all required rule changes so that its customers can be seamlessly transitioned to new service arrangements where necessary and without interruption. Indeed, as referenced above, XO has already sent requests to SBC for negotiation of the necessary amendments to their ICAs, as well as a request for the business line and fiber-based collocators counts to support SBC's Tier 1, Tier 2, and Tier 3 wire center determinations. Despite XO's good faith requests consistent with the process set forth in the TRRO, however, SBC continues to refuse to engage XO in good faith negotiations, and after first refusing to provide any of the back-up data underlying its wire center determinations, has unduly restricted access to such back-up data to counsel only, "copying prohibited," inappropriately relying on the Protective Order issued by the Commission in the TRRO proceeding. See SBC Response at pp 3-4, SBC Accessible Letter dated March 3, 2005. Indeed, as contemplated by ¶ 155 of the 1996 Local Competition Order, CC Docket Nos. 96-98, 95-185, SBC must be required to permit access to such back-up data to XO without such restrictions as such data is necessary for XO to verify SBC's wire center determinations and fully and effectively negotiate the required ICA amendments. SBC's blatant refusal to work with XO in good faith to implement the provisions of the TRRO must not be tolerated. SBC's actions again demonstrate its bad faith as it continues to place unreasonable and inappropriate impediments in the way of its competitors, and in violation of application federal rules. After more than 9 years of delays and excuses, it is time for SBC to fulfill its obligations as required by clear Commission order.

As you are aware, this is a tenuous time for small and mid-sized competitive telecommunications carriers, with new mega mergers and consolidations announced almost weekly, and large carriers continuing to dominate the marketplace. It is thus imperative that ILECs, like SBC, be required to comply with the law so competitive LECs can have the certainty they need to ensure uninterrupted, cost effective, quality service to their customers.

Thank you for your prompt attention to this matter.

Sincerely,

Christopher McKee  
XO Communications, Inc.

XO Communications



EXHIBIT A



Accessible

Date: **February 11, 2005**

Number: **CLECALL05-019**

Effective Date: **N/A**

Category: **Loop-Transport**

Subject: **(BUSINESS PROCESSES) SBC's<sup>1</sup> Implementation of the FCC TRO Remand Order for Unbundled High-Capacity Loops and Unbundled Dedicated Transport – Order Rejection**

Related Letters: **[CLECALL05-020**

Attachment: **Yes (4)**

**Loop/Transport Price**

**Increase/Transition Period;**

**CLECALL05-016 SBC Interim**

**"UNE-P Replacement"**

**Commercial Offering;**

**CLECALL05-018 Letter Re:**

**ULS/UNE-P Price**

**Increase/Transition Period; and**

**CLECALL05-017 Order Rejection**

**ULS-UNE-P]**

States Impacted: **13-States**

Issuing SBC ILECS: **SBC Indiana, SBC Ohio, SBC Michigan, SBC Wisconsin, SBC California, SBC Nevada, SBC Arkansas, SBC Illinois, SBC Kansas, SBC Missouri, SBC Oklahoma, SBC Texas and SBC Connecticut**

Response Deadline: **N/A**

Contact: **Account Manager**

Conference Call/Meeting: **N/A**

To: **SBC's Local Wholesale Customers**

On February 4, 2005, the FCC issued its "TRO Remand Order", concerning the provision of unbundled network elements. As set forth in the TRO Remand Order, specifically in Rule 51.319(a)(6), as of March 11, 2005, CLECs "may not obtain," and SBC and other ILECs are not required to provide access to Dark Fiber Loops on an unbundled basis to requesting telecommunications carriers. The TRO Remand Order also finds, specifically in Rules 51.319(a)(4), (a)(5) and 51.319(e), that, as of March 11, 2005, CLECs "may not obtain," and SBC and other ILECs are not required to provide access to DS1/DS3 Loops or Transport or Dark Fiber Transport on an unbundled basis to requesting telecommunications carriers under certain circumstances. Therefore, as of March 11, 2005, in accordance with the TRO Remand Order, CLECs may not place, and SBC will no longer provision New, Migration or Move Local Service Requests (LSRs) for affected elements.

There are different impairment findings in the TRO Remand Order for each category of elements addressed by this Accessible Letter. To address the differences and to ensure clarity, SBC has included separate attachments for DS1 and DS3 Unbundled High Capacity Loops, DS1 and DS3 Unbundled Dedicated Transport (UDT), Unbundled Dark Fiber Loops and Dark Fiber Unbundled Dedicated Transport. Please refer to the appropriate attachment to determine how orders for each category of elements will be treated in light of the TRO Remand Order.

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<sup>1</sup> References to "SBC" in this Accessible Letter encompass, as applicable, the Issuing SBC ILECs identified at the beginning of this letter.

The effect of the TRO Remand Order on New, Migration or Move LSRs for these affected elements is operative notwithstanding interconnection agreements or applicable tariffs.

Should you have any questions regarding this implementation notice, please contact your Account Manager.

**CLECALL05-019**

**LOOPS ATTACHMENT: Implementation Plan for DS1 and DS3 High-Capacity Loops – Order Rejection.**

**New Local Service Requests (LSRs).**

As of the effective date of the TRO Remand Order, i.e., March 11, 2005, you are no longer authorized to place, nor will SBC accept New, Migration or Move LSRs for DS1 or DS3 High-Capacity Loops in excess of the caps established by Rule 51.319(a)(4) and 51.319(a)(5) or in service areas served by Wire Centers meeting the criteria set forth by the FCC in its TRO Remand Order, Rules 51.319(a)(4) and 51.319(a)(5) ("Affected DS1 and DS3 High-Capacity Loops"). Any New, Migration or Move LSRs placed for Affected DS1 or DS3 High-Capacity Loops on or after March 11, 2005 will be rejected.



**CLECALL05-019**

**TRANSPORT ATTACHMENT: Implementation Plan for DS1 and DS3 Dedicated Transport – Order Rejection.**

**New Local Service Requests (LSRs).**

As of the effective date of the TRO Remand Order, i.e., March 11, 2005, you are no longer authorized to place, nor will SBC accept New, Migration or Move LSRs for DS1 or DS3 Dedicated Transport in excess of the caps established by Rule 51.319(e)(2)(ii) and Rule 51.319(e)(2)(iii) or on routes between Wire Centers meeting the criteria set forth by the FCC in its TRO Remand Order, Rule 51.319(e)(2)(ii) and Rule 51.319(e)(2)(iii) ("Affected DS1 or DS3 Dedicated Transport"). Any New, Migration or Move LSRs placed for Affected DS1 or DS3 Dedicated Transport on or after March 11, 2005 will be rejected.

**CLECALL05-019**

**DARK FIBER LOOPS ATTACHMENT: Implementation Plan for Dark Fiber Loops– Order Rejection.**

**New Local Service Requests (LSRs).**

As of the effective date of the TRO Remand Order, i.e., March 11, 2005, pursuant to Rule 51.319(a)(6), you are no longer authorized to place, nor will SBC accept New, Migration or Move LSRs for Dark Fiber Loops. Any New, Migration or Move LSRs placed for Dark Fiber Loops on or after March 11, 2005 will be rejected.

**CLECALL05-019**

**DARK FIBER TRANSPORT ATTACHMENT: Implementation Plan for Dark Fiber Dedicated Transport– Order Rejection.**

**New Local Service Requests (LSRs).**

As of the effective date of the TRO Remand Order, i.e., March 11, 2005, pursuant to Rule 51.319(e)(iv), you are no longer authorized to place, nor will SBC accept New, Migration or Move LSRs for Dark Fiber Dedicated Transport in service areas between Wire Centers meeting the criteria set forth by the FCC in its TRO Remand Order ("Affected Dark Fiber Dedicated Transport"). Any New, Migration or Move LSRs placed for Affected Dark Fiber Dedicated Transport served by these Wire Centers on or after March 11, 2005 will be rejected.



Accessible

Date: **February 11, 2005**

Number: **CLECALL05-020**

Effective Date: **N/A**

Category: **Loop-Transport**

Subject: **(BUSINESS PROCESSES) SBC's<sup>1</sup> Implementation of the FCC TRO Remand Order for Unbundled High-Capacity Loops and Unbundled Dedicated Transport - Transition Plan**

Related Letters: **[CLECALL05-019**

Attachment: **Yes (5)**

**Loop/Transport Order Rejection;**

**CLECALL05-016 SBC Interim**

**"UNE-P Replacement"**

**Commercial Offering;**

**CLECALL05-018 Letter Re:**

**ULS/UNE-P Price**

**Increase/Transition Period; and**

**CLECALL05-017 Order Rejection**

**ULS-UNE-P]**

States Impacted: **13-States**

Issuing SBC ILECS: **SBC Indiana, SBC Ohio, SBC Michigan, SBC Wisconsin, SBC California, SBC Nevada, SBC Arkansas, SBC Illinois, SBC Kansas, SBC Missouri, SBC Oklahoma, SBC Texas and SBC Connecticut**

Response Deadline: **March 10, 2005**

Contact: **Account Manager**

Conference Call/Meeting: **N/A**

To: **SBC's Local Wholesale Customers**

This letter is to share with you SBC's plans to implement the FCC's February 4, 2005 TRO Remand Order, as it pertains to Unbundled Dedicated Transport and Unbundled High-Capacity Loops. These plans have been developed in accordance with the TRO Remand Order and are described in element-specific attachments to this Accessible Letter with respect to the following two areas as outlined in the TRO Remand Order: 1) the applicable Transition Period for the Embedded Base and 2) the applicable Transition Pricing for the Embedded Base. There are different transition periods defined and different impairment findings in the TRO Remand Order for each category of elements addressed by this Accessible Letter. To address the differences and to ensure clarity, SBC has set forth the different implementation plans in separate attachments for DS1 and DS3 High Capacity Loops, DS1 and DS3 Unbundled Dedicated Transport (UDT), Dark Fiber Loops and Dark Fiber Unbundled Dedicated Transport.

As explained in CLECALL05-019, as of the effective date of the TRO Remand Order, i.e., March 11, 2005, you are no longer authorized to send, and SBC will no longer accept, New, Migration or Move LSRs for unbundled high-capacity loops or transport, as is more specifically set forth in that Accessible Letter, and such orders will be rejected.

Your embedded base of the affected high-capacity loop and transport elements will be treated as is more specifically set forth in the attachments to this Letter, as per the requirements of the TRO Remand Order. Also attached is a sample amendment to your Interconnection Agreement. A signature-ready Amendment and instructions will be available on CLEC-Online

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<sup>1</sup> References to "SBC" in this Accessible Letter encompass, as applicable, the Issuing SBC ILECs identified at the beginning of this letter.

(<https://clec.sbc.com/clec>) not later than February 21, 2005, for you to download, print, complete and return to SBC. Please sign and return the Amendment to SBC by March 10, 2005. Paragraph 233 of the Order requires good faith negotiations regarding implementation of the rule changes and implementation of the conclusions adopted in the Order.

Should you have any questions regarding this implementation notice, please contact your Account Manager.



Final L and T  
Sample Amendment.

**CLECALL05-020**

**LOOPS ATTACHMENT: Implementation Plan for DS1 and DS3 High-Capacity Loops.**

**Transition Period for the Embedded Base.**

As of the effective date of the TRO Remand Order, i.e., March 11, 2005, SBC is no longer obligated to provide unbundled access to DS1 or DS3 High-Capacity Loops in excess of the caps established by Rule 51.319(a)(4) and 51.319(a)(5) or in service areas served by Wire Centers meeting the criteria set forth by the FCC in its TRO Remand Order, Rules 51.319(a)(4) and 51.319(a)(5) ("Affected Unbundled DS1 and DS3 High-Capacity Loops").

As established by the TRO Remand Order, the transition period for the Affected Unbundled DS1 and DS3 High-Capacity Loops is 12 months. This 12-month transition period will begin on March 11, 2005 and end on March 11, 2006. During this 12-month transition period, your Company will be responsible for the transition of Affected DS1 and DS3 High-Capacity Loops to an alternative service arrangement. To the extent that there are CLEC embedded base Affected DS1 or DS3 High-Capacity Loops in place at the conclusion of the 12-month transition period, SBC will convert them to a Special Access month-to-month service under the applicable access tariffs.

**Transition Pricing for the Embedded Base.**

The TRO Remand Order authorizes SBC to modify rates for embedded base Affected Unbundled DS1 and DS3 High-Capacity Loops to equal the higher of (1) the rate your company paid for such high-capacity loops as of June 15, 2004 *plus 15%* or (2) the rate the state commission has established or establishes, if any, between June 16, 2004 and March 11, 2005 for such high-capacity loops, *plus 15%*.

**CLECALL05-020**

**TRANSPORT ATTACHMENT: Implementation Plan for DS1 and DS3 Unbundled Dedicated Transport (UDT).**

**Transition Period for the Embedded Base.**

As of the effective date of the TRO Remand Order, i.e., March 11, 2005, SBC is no longer obligated to provide unbundled access to DS1 or DS3 UDT in excess of the caps established by Rule 51.319(e)(2)(ii) and 51.319(e)(2)(iii) or on routes between pairs of Wire Centers meeting the criteria set forth by the FCC in its TRO Remand Order, Rules 51.319(e)(2)(ii) and 51.319(e)(2)(iii) ("Affected Unbundled DS1 and DS3 High-Capacity Loops").

As established by the TRO Remand Order, the transition period for Affected DS1 and DS3 UDT is 12 months. This 12-month transition period will begin on March 11, 2005 and end on March 11, 2006. During this 12-month transition period, your Company will be responsible for the transition of Affected DS1 and DS3 UDT facilities to an alternative service arrangement. To the extent that there are CLEC embedded base Affected DS1 or DS3 UDT facilities in place at the conclusion of the 12-month transition period, SBC will convert them to a Special Access month-to-month service under the applicable access tariffs.

**Transition Pricing for the Embedded Base.**

The TRO Remand Order authorizes SBC to modify rates for Affected DS1 and DS3 UDT to equal the higher of (1) the rate your company paid for such UDT facilities as of June 15, 2004 *plus 15%* or (2) the rate the state commission has established or establishes, if any, between June 16, 2004 and March 11, 2005 for such UDT facilities loops, *plus 15%*.

**CLECALL05-020**

**DARK FIBER LOOPS ATTACHMENT: Implementation Plan for Dark Fiber High-Capacity Loops.**

**Transition Period for the Embedded Base.**

As of the effective date of the TRO Remand Order, i.e., March 11, 2005, SBC is no longer obligated to provide unbundled access to Dark Fiber High-Capacity Loops. As defined in the TRO Remand Order, the transition period for unbundled Dark Fiber High-Capacity Loops is 18 months. This 18-month transition period will begin on March 11, 2005 and end on September 11, 2006. During this 18-month transition period, your Company will be responsible for the removal of services you are providing over these unbundled Dark Fiber High-Capacity Loops and for returning the Loops to SBC. To the extent that there are CLEC embedded base unbundled Dark Fiber High-Capacity Loops in place at the conclusion of the 18-month transition period, SBC will disconnect such facilities.

**Transition Pricing for the Embedded Base.**

The TRO Remand Order authorizes rates for embedded base unbundled Dark Fiber High-Capacity Loops to be modified to a rate equal to the higher of (1) the rate your company paid for such Dark Fiber High-Capacity Loops as of June 15, 2004 *plus 15%* or (2) the rate the state commission has established or establishes, if any, between June 16, 2004 and March 11, 2005 for such Loops, *plus 15%*.



**CLECALL05-020**

**DARK FIBER TRANSPORT ATTACHMENT: Implementation Plan for Dark Fiber Transport.**

**Transition Period for the Embedded Base.**

As of the effective date of the TRO Remand Order, i.e., March 11, 2005, SBC is no longer obligated to provide unbundled access to Dark Fiber UDT on routes between Wire Centers meeting the criteria set forth by the FCC in its TRO Remand Order, Rule 51.319(e)(2)(iv) ("Affected Dark Fiber UDT").

As established by the TRO Remand Order, the transition period for Affected Dark Fiber UDT is 18 months. This 18-month transition period will begin on March 11, 2005 and end on September 11, 2006. During this 18-month transition period, your Company will be responsible for removing services you are providing over the Affected Dark Fiber UDT and for returning these facilities to SBC. To the extent that there are CLEC embedded base Affected Dark Fiber UDT facilities in place at the conclusion of the 18-month transition period, SBC will disconnect such facilities.

**Pricing for the Embedded Base.**

The TRO Remand Order authorizes rates for Affected Dark Fiber UDT to be modified to a rate equal to the higher of (1) the rate your company paid for such facilities as of June 15, 2004 *plus 15%* or (2) the rate the state commission has established or establishes, if any, between June 16, 2004 and March 11, 2005 for such facilities, *plus 15%*.



## Accessible

Date: **March 3, 2005**

Number: **CLECALL05-037**

Effective Date: **N/A**

Category: **Loop-Transport (UNE)**

Subject: **(BUSINESS PROCESSES) SBC's<sup>1</sup> Loop-Transport Non-Impaired Wire Center Information**

Related Letters: **CLECALL05-019 Loop/Transport Order Rejection; Attachment: No  
CLECALL05-020 Loop/Transport Price  
Increase/Transition Period; and CLECALL05-027 and  
CLECALL05-031 Loop/Transport Non-Impaired Wire  
Center Identification**

States Impacted: **13-States**

Issuing SBC ILECS: **SBC Indiana, SBC Ohio, SBC Michigan, SBC Wisconsin, SBC California,  
SBC Nevada , SBC Arkansas, SBC Illinois, SBC Kansas, SBC Missouri,  
SBC Oklahoma, SBC Texas and SBC Connecticut**

Response Deadline: **March 10, 2005**

Contact: **See Contact in this AL**

Conference Call/Meeting: **N/A**

To: SBC's Wholesale Customers

The purpose of this Accessible Letter is to provide additional information regarding the wire centers that meet the FCC's non-impairment thresholds for Dedicated DS1, DS3 and Dark Fiber Transport routes and DS1 and DS3 loops as set forth in the FCC's new Rule 51.319 and the Triennial Review Remand Order (TRRO), released on February 4, 2005. Additionally, to the extent notice is required under interconnection agreements, this Accessible Letter provides notice that CLEC-specific collocation data may be disclosed for purposes of implementing the FCC's TRRO and Rule 51.319.

On February 22, 2005, SBC, via Accessible Letters **CLECALL05-027** and **CLECALL05-031**, provided information which identified wire centers where CLECS are not impaired without unbundled Dedicated DS1, DS3 and Dark Fiber Transport and unbundled DS1 and DS3 loops under the FCC's new unbundling criteria, and where CLECs therefore will not be able to order new facilities as of the effective date of the FCC's TRRO, i.e., March 11, 2005.

SBC has received requests for additional data regarding 1) the number of ARMIS 43-08 business lines, business UNE-P lines and UNE-loops and/or 2) the number of unaffiliated fiber-based collocators in the identified wire centers. SBC is providing such information for the sole purpose of allowing requesting carriers to fulfill their obligation to conduct the required "reasonably diligent inquiry" before self-certifying that any request for high-capacity unbundled loops or dedicated transport does not include facilities for which there is no impairment. This is to advise you that such data will be available to counsel pursuant to the Protective Order issued by the FCC in the TRRO proceeding (DA 04-3152, released September 29, 2004) at the following location:

Kellogg, Huber, Hansen, Todd, Evans and Figel P.L.L.C.  
1615 M Street, N.W., Suite 400  
Washington, D.C. 20036

Such information will be designated "copying prohibited" pursuant to paragraph 7 of the Protective Order.

To schedule an appointment to view the information, please call Kevin Walker at 202-367-7820.

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<sup>1</sup> References to "SBC" in this Accessible Letter encompass, as applicable, the Issuing SBC ILECs identified at the beginning of this letter.

EXHIBIT B

XO Communications



## XO Communications



810 Jorie Boulevard  
Suite 200  
Oak Brook, IL 60523  
USA

February 18, 2005

SBC Contract Administration  
ATTN: Notices Manager  
311 S. Akard, 9<sup>th</sup> Floor  
Four Bell Plaza  
Dallas, TX 75202-5398

Re: Triennial Review Remand Order - Accessible Letters

XO Communications, Inc. ("XO"), has received SBC's Accessible Letter Number CLECALL05-019 and related letters<sup>1</sup> regarding the TRO Remand Order dated February 11, 2005 ("Notice"). In the Notice, SBC states that "as of March 11, 2005, in accordance with the TRO Remand Order, CLECs may not place, and SBC will no longer provision New, Migration or Move Local Service Requests (LSRs) for affected elements" under certain circumstances, including Dark Fiber Loops or Transport and DS1/DS3 Loops or Transport. The Notice further provides that "[t]he effect of the TRO Remand Order on New, Migration or Move LSRs for these affected elements is operative notwithstanding interconnection agreements or applicable tariffs," and any such LSRs "on or after March 11, 2005 will be rejected." Neither the FCC nor the parties' interconnection agreements ("ICAs") authorize SBC to take such unilateral action without first amending the ICAs. The Notice, therefore, violates federal law and is an anticipatory breach of SBC's agreements with XO.

SBC purports to rely on the recent FCC unbundling order, *In re Unbundled Access to Network Elements*, FCC 04-290, WC Docket No. 04-313 & CC Docket No. 01-338, Order on Remand (rel. Feb. 4, 2005) ("Triennial Review Remand Order" or "TRRO"). The Notice, however, fails to reference any provision in the TRRO that permits SBC to implement its interpretation of that Order without amending its ICAs. Such an omission is not surprising given that the FCC expressly held to the contrary.

The FCC stated, "We expect that incumbent LECs and competing carriers will implement the Commission's findings as directed by Section 252 of the Act. Thus, carriers must implement changes to their interconnection agreements consistent with our conclusions in this Order. . . . Thus, the incumbent LEC and competitive LEC must negotiate in good faith regarding any rates, terms, and conditions necessary to implement our rule changes." TRRO ¶ 233

<sup>1</sup> CLECALL 05-017, 05-018, 05-019 and 05-020

XO Communications



(footnote omitted and emphasis added). Far from authorizing SBC to implement the TRRO unilaterally, the FCC has required that SBC negotiate with XO to amend their ICAs to incorporate the most recent changes to the FCC's rules.

The transition plans set forth in the TRRO also expressly apply to the ICA amendment process. The Order provides that "carriers have twelve months from the effective date of this Order to **modify their interconnection agreements**, including completing any change of law process." TRRO ¶¶ 143 & 196 (emphasis added). The FCC thus established the transition period to provide the time required for SBC and XO to amend their interconnection agreements, not just to transition affected UNEs to alternative facilities or arrangements.

Nor could the TRRO's provisions otherwise be self-effectuating as SBC assumes in the Notice. The Order states, "Of course, the transition mechanism adopted here is simply a default process, and pursuant to section 252(a)(1), carriers remain free to negotiate alternative arrangements superseding this transition period." TRRO ¶¶ 145 & 198. SBC may not unilaterally implement the TRRO transition plan when that period has been established to provide time to amend the ICAs and the entire transition plan itself is subject to being replaced by a plan negotiated or arbitrated between the parties.

XO has no interest in unreasonably delaying implementation of changes in federal law. Indeed, SBC has yet to implement effective provisions of the Triennial Review Order, including commingling and conversions of special access services to UNEs, and XO seeks expeditiously to incorporate those requirements into the parties' ICAs. Accordingly, XO by way of letters to SBC dated February 18<sup>th</sup>, 2005, has formally requested that SBC engage in negotiations to amend those ICAs to conform to current legal requirements.

Pending the outcome of those negotiations, however, XO expects SBC to comply with the existing ICAs. If SBC refuses to process XO's orders for UNEs, XO will view such failure as unlawful and an act of bad faith, and XO will immediately take appropriate legal and regulatory actions.

Sincerely,

A handwritten signature in cursive script, reading "Kristin U. Shulman". The signature is written in dark ink and is positioned below the "Sincerely," text.

Kristin U. Shulman  
Executive Director – Regulatory Affairs

Cc: Larry Cooper  
Cheryl Woodward-Sullivan

EXHIBIT C

XO Communications



February 18, 2005

**VIA OVERNIGHT MAIL**

SBC Contract Administration

ATTN: Notices Manager  
 311 S. Akard, 9<sup>th</sup> Floor  
 Four Bell Plaza  
 Dallas, TX 75202-5398

Attached are separate notices from XO Communications Services, Inc. requesting SBC begin good-faith negotiations under Section 252 of the 1996 Telecom Act directed toward reaching a mutually agreeable ICA amendment that fully and properly implements the changes that have occurred as a result of the *Triennial Review Remand Order*, and to the extent necessary the *Triennial Review Order*. Attached are individual notices from XO Communications Services, Inc., on behalf of and/or as successor in interest to:

XO Illinois, Inc.	Allegiance Telecom of Illinois, Inc.	Coast to Coast Telecommunications, Inc.
XO Michigan, Inc.	Allegiance Telecom of Michigan, Inc.	
XO Ohio, Inc.	Allegiance Telecom of Ohio, Inc.	
XO Texas, Inc.	Allegiance Telecom of Texas, Inc.	
XO Missouri, Inc.	Allegiance Telecom of Missouri, Inc.	
XO California, Inc.	Allegiance Telecom of California, Inc.	
XO Indiana, Inc.		
XO Wisconsin, Inc.		
XO Oklahoma, Inc.		
XO Arkansas, Inc.		
XO Kansas, Inc.		
XO Connecticut, Inc.		
XO California, Inc.		

XO Communications, Inc.

11111 Sunset Hills Road  
Reston, VA 20190  
USA

February 18, 2005

**VIA OVERNIGHT MAIL**SBC Contract Administration  
ATTN: Notices Manager  
311 S. Akard, 9<sup>th</sup> Floor  
Four Bell Plaza  
Dallas, TX 75202-5398

On February 4, 2005, the Federal Communications Commission ("FCC") released the text of its Order on Remand in *In the Matter of Review of the Section 251 Unbundling Obligations of Incumbent Local Exchange Carriers*, CC Docket No. 01-338 ("*Triennial Review Remand Order*"). The rules adopted in the *Triennial Review Remand Order* constitute a change in law under the current interconnection agreement ("ICA") between XO<sup>1</sup> and Pacific Bell Telephone Company d/b/a SBC California ("SBC"). Pursuant to Section 2.1 of the Second Amendment Superseding Certain Intervening Law, Compensation, Interconnection and Trunking Provisions of that ICA, formal written notice is required to begin the process of entering into negotiations to arrive at an amendment to implement into the ICA the FCC's determinations in the *Triennial Review Remand Order*.

Accordingly, we hereby provide this notice, and request that SBC begin good-faith negotiations under Section 252 of the 1996 Telecom Act directed toward reaching a mutually agreeable ICA amendment that fully and properly implements the changes that have occurred as a result of the *Triennial Review Remand Order*. We intend that the negotiations will include the effect of any independent state authority to order unbundling on SBC's ongoing obligation to provide access to certain unbundled network elements.

XO notes that, pursuant to Section 2.1 of the Second Amendment Superseding Certain Intervening Law, Compensation, Interconnection and Trunking Provisions of the current ICA and paragraph 233 of the *Triennial Review Remand Order*, the existing terms of the parties' ICA continue in effect until such time as the Parties have executed a written amendment to the ICA. As such, XO expects that both it and SBC will continue to honor all terms and conditions of the current interconnection agreement until such time as a written amendment is executed.

---

<sup>1</sup> "XO," for purposes of this notice, refers to XO Communications Services, Inc., on behalf of and/or as successor in interest to XO California, Inc.





The main company contact for these negotiations is:

Gegi Leeger  
Director Regulatory Contracts  
11111 Sunset Hills Road  
Reston, VA 20190  
703-547-2109 voice  
703-547-2300 facsimile  
Email: [gegi.leeger@xo.com](mailto:gegi.leeger@xo.com)

Please initiate the internal processes within SBC that will facilitate this request, and respond to this letter as expeditiously as possible with written acknowledgement of your receipt so that we may begin the negotiation process.

Further, in order to timely incorporate the *Triennial Review Remand Order's* rules into our revised interconnection agreement, the wire centers in your operating areas that satisfy the Tier 1, Tier 2, and Tier 3 criteria for dedicated transport and DS1 and DS3 loops must be identified and verified. Accordingly, XO hereby requests that SBC provide all backup data necessary to verify the number of lines and the identity of the fiber-based collocators by end office for each end office that SBC claims fall within each tier as those tiers are defined in the *Triennial Review Remand Order*. This data should be provided by no later than Friday, February 25, 2005.

Sincerely,

A handwritten signature in black ink, appearing to read 'Gegi Leeger', written over a horizontal line.

Gegi Leeger  
Director Regulatory Contracts

XO Communications, Inc.

11111 Sunset Hills Road  
Reston, VA 20190  
USA

February 18, 2005

**VIA OVERNIGHT MAIL**SBC Contract Administration  
ATTN: Notices Manager  
311 S. Akard, 9<sup>th</sup> Floor  
Four Bell Plaza  
Dallas, TX 75202-5398

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Accordingly, we hereby provide this notice, and request that SBC begin good-faith negotiations under Section 252 of the 1996 Telecom Act directed toward reaching a mutually agreeable ICA amendment that fully and properly implements the changes that have occurred as a result of the *Triennial Review Remand Order*. In addition, formal notice is hereby being given for purposes of again commencing negotiations on the changes in law implemented by the *Triennial Review Order* that were unaffected by the *Triennial Review Remand Order*.<sup>2</sup> We intend that the negotiations will include the effect of section 271 of the 1996 Telecom Act on SBC's ongoing obligation to provide access to certain unbundled network elements, as well as independent state authority to order unbundling.

---

<sup>1</sup> "XO," for purposes of this notice, refers to XO Communications Services, Inc., on behalf of and/or as successor in interest to XO Wisconsin, Inc.

<sup>2</sup> The inclusion of changes in law implemented by the *Triennial Review Order* in this request should not be construed as a waiver of any right XO may have, and XO hereby reserves all such rights, to seek immediate relief for SBC's continued refusal, after months of negotiation between the parties, to implement those provisions of the TRO not affected by appeal or vacatur.

The XO logo consists of a stylized 'X' followed by a circle with a dot in the center, resembling an eye or a target.

XO notes that, pursuant to Section 2.1 of the Second Amendment Superseding Certain Intervening Law, Compensation, Interconnection and Trunking Provisions of the current ICA and paragraph 233 of the *Triennial Review Remand Order*, the existing terms of the parties' ICA continue in effect until such time as the Parties have executed a written amendment to the ICA. As such, XO expects that both it and SBC will continue to honor all terms and conditions of the current interconnection agreement until such time as a written amendment is executed.

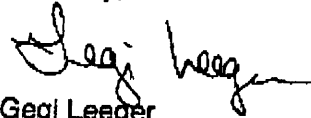
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Reston, VA 20190  
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Email: [gegi.leeger@xo.com](mailto:gegi.leeger@xo.com)

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Sincerely,

A handwritten signature in black ink, appearing to read 'Gegi Leeger', with a stylized flourish at the end.

Gegi Leeger  
Director Regulatory Contracts

XO Communications, Inc.

11111 Sunset Hills Road  
Reston, VA 20190  
USA

February 18, 2005

**VIA OVERNIGHT MAIL**SBC Contract Administration  
ATTN: Notices Manager  
311 S. Akard, 9<sup>th</sup> Floor  
Four Bell Plaza  
Dallas, TX 75202-5398

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---

<sup>1</sup> "XO," for purposes of this notice, refers to XO Communications Services, Inc., on behalf of and/or as successor in interest to Allegiance Telecom of California, Inc.

<sup>2</sup> The inclusion of changes in law implemented by the *Triennial Review Order* in this request should not be construed as a waiver of any right XO may have, and XO hereby reserves all such rights, to seek immediate relief for SBC's continued refusal, after months of negotiation between the parties, to implement those provisions of the TRO not affected by appeal or vacatur.

XO<sup>TM</sup>

XO notes that, pursuant to Section 2.1 of the Second Amendment Superseding Certain Intervening Law, Compensation, Interconnection and Trunking Provisions of the current ICA and paragraph 233 of the *Triennial Review Remand Order*, the existing terms of the parties' ICA continue in effect until such time as the Parties have executed a written amendment to the ICA. As such, XO expects that both it and SBC will continue to honor all terms and conditions of the current interconnection agreement until such time as a written amendment is executed.

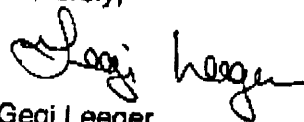
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Director Regulatory Contracts

XO Communications, Inc.

11111 Sunset Hills Road  
Reston, VA 20190  
USA

February 18, 2005

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<sup>1</sup> "XO," for purposes of this notice, refers to XO Communications Services, Inc., on behalf of and/or as successor in interest to Allegiance Telecom of Illinois, Inc.

<sup>2</sup> The inclusion of changes in law implemented by the *Triennial Review Order* in this request should not be construed as a waiver of any right XO may have, and XO hereby reserves all such rights, to seek immediate relief for SBC's continued refusal, after months of negotiation between the parties, to implement those provisions of the TRO not affected by appeal or vacatur.



XO notes that, pursuant to Section 2.1 of the Second Amendment Superseding Certain Intervening Law, Compensation, Interconnection and Trunking Provisions of the current ICA and paragraph 233 of the *Triennial Review Remand Order*, the existing terms of the parties' ICA continue in effect until such time as the Parties have executed a written amendment to the ICA. As such, XO expects that both it and SBC will continue to honor all terms and conditions of the current interconnection agreement until such time as a written amendment is executed.

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Sincerely,

A handwritten signature in black ink, appearing to read 'Gegi Leeger'.

Gegi Leeger  
Director Regulatory Contracts

XO Communications, Inc.

11111 Sunset Mills Road  
Reston, VA 20190  
USA

February 18, 2005

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ATTN: Notices Manager  
311 S. Akard, 9<sup>th</sup> Floor  
Four Bell Plaza  
Dallas, TX 75202-5398

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---

<sup>1</sup> "XO," for purposes of this notice, refers to XO Communications Services, Inc., on behalf of and/or as successor in interest to Allegiance Telecom of Michigan, Inc.

<sup>2</sup> The inclusion of changes in law implemented by the *Triennial Review Order* in this request should not be construed as a waiver of any right XO may have, and XO hereby reserves all such rights, to seek immediate relief for SBC's continued refusal, after months of negotiation between the parties, to implement those provisions of the TRO not affected by appeal or vacatur.





XO notes that, pursuant to Section 2.1 of the Second Amendment Superseding Certain Intervening Law, Compensation, Interconnection and Trunking Provisions of the current ICA and paragraph 233 of the *Triennial Review Remand Order*, the existing terms of the parties' ICA continue in effect until such time as the Parties have executed a written amendment to the ICA. As such, XO expects that both it and SBC will continue to honor all terms and conditions of the current interconnection agreement until such time as a written amendment is executed.

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Sincerely,

A handwritten signature in cursive script that reads "Gegi Leeger".

Gegi Leeger  
Director Regulatory Contracts

XO Communications, Inc.

11111 Sunset Hills Road  
Reston, VA 20190  
USA

February 18, 2005

**VIA OVERNIGHT MAIL**SBC Contract Administration  
ATTN: Notices Manager  
311 S. Akard, 9<sup>th</sup> Floor  
Four Bell Plaza  
Dallas, TX 75202-5398

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<sup>1</sup> "XO," for purposes of this notice, refers to XO Communications Services, Inc., on behalf of and/or as successor in interest to Allegiance Telecom of Missouri, Inc.

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Gegi Leeger  
Director Regulatory Contracts

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Reston, VA 20190  
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February 18, 2005

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---

<sup>1</sup> "XO," for purposes of this notice, refers to XO Communications Services, Inc., on behalf of and/or as successor in interest to Allegiance Telecom of Ohio, Inc.

<sup>2</sup> The inclusion of changes in law implemented by the *Triennial Review Order* in this request should not be construed as a waiver of any right XO may have, and XO hereby reserves all such rights, to seek immediate relief for SBC's continued refusal, after months of negotiation between the parties, to implement those provisions of the TRO not affected by appeal or vacatur.

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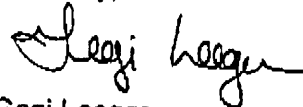
The main company contact for these negotiations is:

Gegi Leeger  
Director Regulatory Contracts  
11111 Sunset Hills Road  
Reston, VA 20190  
703-547-2109 voice  
703-547-2300 facsimile  
Email: gegi.leeger@xo.com

Please initiate the internal processes within SBC that will facilitate this request, and respond to this letter as expeditiously as possible with written acknowledgement of your receipt so that we may begin the negotiation process.

Further, in order to timely incorporate the *Triennial Review Remand Order's* rules into our revised interconnection agreement, the wire centers in your operating areas that satisfy the Tier 1, Tier 2, and Tier 3 criteria for dedicated transport and DS1 and DS3 loops must be identified and verified. Accordingly, XO hereby requests that SBC provide all backup data necessary to verify the number of lines and the identity of the fiber-based collocators by end office for each end office that SBC claims fall within each tier as those tiers are defined in the *Triennial Review Remand Order*. This data should be provided by no later than Friday, February 25, 2005.

Sincerely,

A handwritten signature in black ink, appearing to read 'Gegi Leeger', written in a cursive style.

Gegi Leeger  
Director Regulatory Contracts

XO Communications, Inc.

11111 Sunset Hills Road  
Reston, VA 20190  
USA

XO™

February 18, 2005

**VIA OVERNIGHT MAIL**SBC Contract Administration  
ATTN: Notices Manager  
311 S. Akard, 9<sup>th</sup> Floor  
Four Bell Plaza  
Dallas, TX 75202-5398

On February 4, 2005, the Federal Communications Commission ("FCC") released the text of its Order on Remand in *In the Matter of Review of the Section 251 Unbundling Obligations of Incumbent Local Exchange Carriers*, CC Docket No. 01-338 ("*Triennial Review Remand Order*"). The rules adopted in the *Triennial Review Remand Order* constitute a change in law under the current interconnection agreement ("ICA") between XO<sup>1</sup> and Southwestern Bell Telephone, L.P. d/b/a SBC Texas ("SBC"). Pursuant to Section 2.1 of the Second Amendment Superseding Certain Intervening Law, Compensation, Interconnection and Trunking Provisions of that ICA, formal written notice is required to begin the process of entering into negotiations to arrive at an amendment to implement into the ICA the FCC's determinations in the *Triennial Review Remand Order*.

Accordingly, we hereby provide this notice, and request that SBC begin good-faith negotiations under Section 252 of the 1996 Telecom Act directed toward reaching a mutually agreeable ICA amendment that fully and properly implements the changes that have occurred as a result of the *Triennial Review Remand Order*. In addition, formal notice is hereby being given for purposes of again commencing negotiations on the changes in law implemented by the *Triennial Review Order* that were unaffected by the *Triennial Review Remand Order*.<sup>2</sup> We intend that the negotiations will include the effect of section 271 of the 1996 Telecom Act on SBC's ongoing obligation to provide access to certain unbundled network elements, as well as independent state authority to order unbundling.

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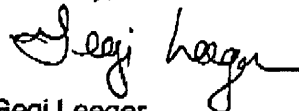
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Director Regulatory Contracts

XO Communications, Inc.

11111 Sunset Hills Road  
Reston, VA 20190  
USA

February 18, 2005

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ATTN: Notices Manager  
311 S. Akard, 9<sup>th</sup> Floor  
Four Bell Plaza  
Dallas, TX 75202-5398

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<sup>1</sup> "XO," for purposes of this notice, refers to XO Communications, Inc., on behalf of Coast to Coast Telecommunications, Inc.

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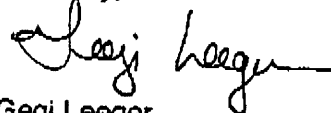
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Gegi Leeger  
Director Regulatory Contracts

XO Communications, Inc.

11111 Sunset Hills Road  
Reston, VA 20190  
USA

February 18, 2005

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Four Bell Plaza  
Dallas, TX 75202-5398

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11111 Sunset Hills Road  
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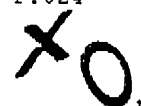
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Director Regulatory Contracts

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February 18, 2005

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February 18, 2005

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Four Bell Plaza  
Dallas, TX 75202-5398

On February 4, 2005, the Federal Communications Commission ("FCC") released the text of its Order on Remand in *In the Matter of Review of the Section 251 Unbundling Obligations of Incumbent Local Exchange Carriers*, CC Docket No. 01-338 ("*Triennial Review Remand Order*"). The rules adopted in the *Triennial Review Remand Order* constitute a change in law under the current interconnection agreement ("ICA") between XO<sup>1</sup> and Michigan Bell Telephone Company d/b/a/ SBC Michigan ("SBC"). Pursuant to Section 2.1 of the Second Amendment Superseding Certain Intervening Law, Compensation, Interconnection and Trunking Provisions of that ICA, formal written notice is required to begin the process of entering into negotiations to arrive at an amendment to implement into the ICA the FCC's determinations in the *Triennial Review Remand Order*.

Accordingly, we hereby provide this notice, and request that SBC begin good-faith negotiations under Section 252 of the 1996 Telecom Act directed toward reaching a mutually agreeable ICA amendment that fully and properly implements the changes that have occurred as a result of the *Triennial Review Remand Order*. In addition, formal notice is hereby being given for purposes of again commencing negotiations on the changes in law implemented by the *Triennial Review Order* that were unaffected by the *Triennial Review Remand Order*.<sup>2</sup> We intend that the negotiations will include the effect of section 271 of the 1996 Telecom Act on SBC's ongoing obligation to provide access to certain unbundled network elements, as well as independent state authority to order unbundling.

---

<sup>1</sup> "XO," for purposes of this notice, refers to XO Communications Services, Inc., on behalf of and/or as successor in interest to XO Michigan, Inc.

<sup>2</sup> The inclusion of changes in law implemented by the *Triennial Review Order* in this request should not be construed as a waiver of any right XO may have, and XO hereby reserves all such rights, to seek immediate relief for SBC's continued refusal, after months of negotiation between the parties, to implement those provisions of the TRO not affected by appeal or vacatur.

XO Communications, Inc.

11111 Sunset Hills Road  
Reston, VA 20190  
USA

XO

XO notes that, pursuant to Section 2.1 of the Second Amendment Superseding Certain Intervening Law, Compensation, Interconnection and Trunking Provisions of the current ICA and paragraph 233 of the *Triennial Review Remand Order*, the existing terms of the parties' ICA continue in effect until such time as the Parties have executed a written amendment to the ICA. As such, XO expects that both it and SBC will continue to honor all terms and conditions of the current interconnection agreement until such time as a written amendment is executed.

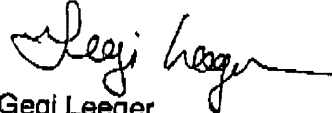
The main company contact for these negotiations is:

Gegi Leeger  
Director Regulatory Contracts  
11111 Sunset Hills Road  
Reston, VA 20190  
703-547-2109 voice  
703-547-2300 facsimile  
Email: [gegi.leeger@xo.com](mailto:gegi.leeger@xo.com)

Please initiate the internal processes within SBC that will facilitate this request, and respond to this letter as expeditiously as possible with written acknowledgement of your receipt so that we may begin the negotiation process.

Further, in order to timely incorporate the *Triennial Review Remand Order's* rules into our revised interconnection agreement, the wire centers in your operating areas that satisfy the Tier 1, Tier 2, and Tier 3 criteria for dedicated transport and DS1 and DS3 loops must be identified and verified. Accordingly, XO hereby requests that SBC provide all backup data necessary to verify the number of lines and the identity of the fiber-based collocators by end office for each end office that SBC claims fall within each tier as those tiers are defined in the *Triennial Review Remand Order*. This data should be provided by no later than Friday, February 25, 2005.

Sincerely,



Gegi Leeger  
Director Regulatory Contracts

XO Communications, Inc.

11111 Sunset Hills Road  
Reston, VA 20190  
USA

February 18, 2005

**VIA OVERNIGHT MAIL**SBC Contract Administration  
ATTN: Notices Manager  
311 S. Akard, 9<sup>th</sup> Floor  
Four Bell Plaza  
Dallas, TX 75202-5398

On February 4, 2005, the Federal Communications Commission ("FCC") released the text of its Order on Remand in *In the Matter of Review of the Section 251 Unbundling Obligations of Incumbent Local Exchange Carriers*, CC Docket No. 01-338 ("*Triennial Review Remand Order*"). The rules adopted in the *Triennial Review Remand Order* constitute a change in law under the current interconnection agreement ("ICA") between XO<sup>1</sup> and Southwestern Bell Telephone, L.P. d/b/a SBC Missouri ("SBC"). Pursuant to Section 2.1 of the Second Amendment Superseding Certain Intervening Law, Compensation, Interconnection and Trunking Provisions of that ICA, formal written notice is required to begin the process of entering into negotiations to arrive at an amendment to implement into the ICA the FCC's determinations in the *Triennial Review Remand Order*.

Accordingly, we hereby provide this notice, and request that SBC begin good-faith negotiations under Section 252 of the 1996 Telecom Act directed toward reaching a mutually agreeable ICA amendment that fully and properly implements the changes that have occurred as a result of the *Triennial Review Remand Order*. In addition, formal notice is hereby being given for purposes of again commencing negotiations on the changes in law implemented by the *Triennial Review Order* that were unaffected by the *Triennial Review Remand Order*.<sup>2</sup> We intend that the negotiations will include the effect of section 271 of the 1996 Telecom Act on SBC's ongoing obligation to provide access to certain unbundled network elements, as well as independent state authority to order unbundling.

---

<sup>1</sup> "XO," for purposes of this notice, refers to XO Communications Services, Inc., on behalf of and/or as successor in interest to XO Missouri, Inc.

<sup>2</sup> The inclusion of changes in law implemented by the *Triennial Review Order* in this request should not be construed as a waiver of any right XO may have, and XO hereby reserves all such rights, to seek immediate relief for SBC's continued refusal, after months of negotiation between the parties, to implement those provisions of the TRO not affected by appeal or vacatur.



XO notes that, pursuant to Section 2.1 of the Second Amendment Superseding Certain Intervening Law, Compensation, Interconnection and Trunking Provisions of the current ICA and paragraph 233 of the *Triennial Review Remand Order*, the existing terms of the parties' ICA continue in effect until such time as the Parties have executed a written amendment to the ICA. As such, XO expects that both it and SBC will continue to honor all terms and conditions of the current interconnection agreement until such time as a written amendment is executed.

The main company contact for these negotiations is:

Gegi Leeger  
Director Regulatory Contracts  
11111 Sunset Hills Road  
Reston, VA 20190  
703-547-2109 voice  
703-547-2300 facsimile  
Email: [gegi.leeger@xo.com](mailto:gegi.leeger@xo.com)

Please initiate the internal processes within SBC that will facilitate this request, and respond to this letter as expeditiously as possible with written acknowledgement of your receipt so that we may begin the negotiation process.

Further, in order to timely incorporate the *Triennial Review Remand Order's* rules into our revised interconnection agreement, the wire centers in your operating areas that satisfy the Tier 1, Tier 2, and Tier 3 criteria for dedicated transport and DS1 and DS3 loops must be identified and verified. Accordingly, XO hereby requests that SBC provide all backup data necessary to verify the number of lines and the identity of the fiber-based collocators by end office for each end office that SBC claims fall within each tier as those tiers are defined in the *Triennial Review Remand Order*. This data should be provided by no later than Friday, February 25, 2005.

Sincerely,

A handwritten signature in black ink, appearing to read 'Gegi Leeger'.

Gegi Leeger  
Director Regulatory Contracts

XO Communications, Inc.

11111 Sunset Hills Road  
Reston, VA 20190  
USA

February 18, 2005

**VIA OVERNIGHT MAIL**SBC Contract Administration  
ATTN: Notices Manager  
311 S. Akard, 9<sup>th</sup> Floor  
Four Bell Plaza  
Dallas, TX 75202-5398

On February 4, 2005, the Federal Communications Commission ("FCC") released the text of its Order on Remand in *In the Matter of Review of the Section 251 Unbundling Obligations of Incumbent Local Exchange Carriers*, CC Docket No. 01-338 ("*Triennial Review Remand Order*"). The rules adopted in the *Triennial Review Remand Order* constitute a change in law under the current interconnection agreement ("ICA") between XO<sup>1</sup> and Ohio Bell Telephone Company d/b/a/ SBC Ohio ("SBC"). Pursuant to Section 2.1 of the Second Amendment Superseding Certain Intervening Law, Compensation, Interconnection and Trunking Provisions of that ICA, formal written notice is required to begin the process of entering into negotiations to arrive at an amendment to implement into the ICA the FCC's determinations in the *Triennial Review Remand Order*.

Accordingly, we hereby provide this notice, and request that SBC begin good-faith negotiations under Section 252 of the 1996 Telecom Act directed toward reaching a mutually agreeable ICA amendment that fully and properly implements the changes that have occurred as a result of the *Triennial Review Remand Order*. In addition, formal notice is hereby being given for purposes of again commencing negotiations on the changes in law implemented by the *Triennial Review Order* that were unaffected by the *Triennial Review Remand Order*.<sup>2</sup> We intend that the negotiations will include the effect of section 271 of the 1996 Telecom Act on SBC's ongoing obligation to provide access to certain unbundled network elements, as well as independent state authority to order unbundling.

<sup>1</sup> "XO," for purposes of this notice, refers to XO Communications Services, Inc., on behalf of and/or as successor in interest to XO Ohio, Inc.

<sup>2</sup> The inclusion of changes in law implemented by the *Triennial Review Order* in this request should not be construed as a waiver of any right XO may have, and XO hereby reserves all such rights, to seek immediate relief for SBC's continued refusal, after months of negotiation between the parties, to implement those provisions of the TRO not affected by appeal or vacatur.





XO notes that, pursuant to Section 2.1 of the Second Amendment Superseding Certain Intervening Law, Compensation, Interconnection and Trunking Provisions of the current ICA and paragraph 233 of the *Triennial Review Remand Order*, the existing terms of the parties' ICA continue in effect until such time as the Parties have executed a written amendment to the ICA. As such, XO expects that both it and SBC will continue to honor all terms and conditions of the current interconnection agreement until such time as a written amendment is executed.

The main company contact for these negotiations is:

Gegi Leeger  
Director Regulatory Contracts  
11111 Sunset Hills Road  
Reston, VA 20190  
703-547-2109 voice  
703-547-2300 facsimile  
Email: [gegi.leeger@xo.com](mailto:gegi.leeger@xo.com)

Please initiate the internal processes within SBC that will facilitate this request, and respond to this letter as expeditiously as possible with written acknowledgement of your receipt so that we may begin the negotiation process.

Further, in order to timely incorporate the *Triennial Review Remand Order's* rules into our revised interconnection agreement, the wire centers in your operating areas that satisfy the Tier 1, Tier 2, and Tier 3 criteria for dedicated transport and DS1 and DS3 loops must be identified and verified. Accordingly, XO hereby requests that SBC provide all backup data necessary to verify the number of lines and the identity of the fiber-based collocators by end office for each end office that SBC claims fall within each tier as those tiers are defined in the *Triennial Review Remand Order*. This data should be provided by no later than Friday, February 25, 2005.

Sincerely,

A handwritten signature in black ink, appearing to read 'Gegi Leeger'.

Gegi Leeger  
Director Regulatory Contracts

XO Communications, Inc.

11111 Sunset Hills Road  
Reston, VA 20190  
USA

February 18, 2005

**VIA OVERNIGHT MAIL**SBC Contract Administration  
ATTN: Notices Manager  
311 S. Akard, 9<sup>th</sup> Floor  
Four Bell Plaza  
Dallas, TX 75202-5398

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Accordingly, we hereby provide this notice, and request that SBC begin good-faith negotiations under Section 252 of the 1996 Telecom Act directed toward reaching a mutually agreeable ICA amendment that fully and properly implements the changes that have occurred as a result of the *Triennial Review Remand Order*. In addition, formal notice is hereby being given for purposes of again commencing negotiations on the changes in law implemented by the *Triennial Review Order* that were unaffected by the *Triennial Review Remand Order*.<sup>2</sup> We intend that the negotiations will include the effect of section 271 of the 1996 Telecom Act on SBC's ongoing obligation to provide access to certain unbundled network elements, as well as independent state authority to order unbundling.

<sup>1</sup> "XO," for purposes of this notice, refers to XO Communications Services, Inc., on behalf of and/or as successor in interest to XO Oklahoma, Inc.

<sup>2</sup> The inclusion of changes in law implemented by the *Triennial Review Order* in this request should not be construed as a waiver of any right XO may have, and XO hereby reserves all such rights, to seek immediate relief for SBC's continued refusal, after months of negotiation between the parties, to implement those provisions of the TRO not affected by appeal or vacatur.



XO notes that, pursuant to Section 2.1 of the Second Amendment Superseding Certain Intervening Law, Compensation, Interconnection and Trunking Provisions of the current ICA and paragraph 233 of the *Triennial Review Remand Order*, the existing terms of the parties' ICA continue in effect until such time as the Parties have executed a written amendment to the ICA. As such, XO expects that both it and SBC will continue to honor all terms and conditions of the current interconnection agreement until such time as a written amendment is executed.

The main company contact for these negotiations is:

Gegi Leeger  
Director Regulatory Contracts  
11111 Sunset Hills Road  
Reston, VA 20190  
703-547-2109 voice  
703-547-2300 facsimile  
Email: [gegi.leeger@xo.com](mailto:gegi.leeger@xo.com)

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Further, in order to timely incorporate the *Triennial Review Remand Order's* rules into our revised interconnection agreement, the wire centers in your operating areas that satisfy the Tier 1, Tier 2, and Tier 3 criteria for dedicated transport and DS1 and DS3 loops must be identified and verified. Accordingly, XO hereby requests that SBC provide all backup data necessary to verify the number of lines and the identity of the fiber-based collocators by end office for each end office that SBC claims fall within each tier as those tiers are defined in the *Triennial Review Remand Order*. This data should be provided by no later than Friday, February 25, 2005.

Sincerely,

A handwritten signature in black ink, appearing to read 'Gegi Leeger'.

Gegi Leeger  
Director Regulatory Contracts

XO Communications, Inc.

11111 Sunset Hills Road  
Reston, VA 20190  
USA

February 18, 2005

**VIA OVERNIGHT MAIL**

SBC Contract Administration  
ATTN: Notices Manager  
311 S. Akard, 9<sup>th</sup> Floor  
Four Bell Plaza  
Dallas, TX 75202-5398

On February 4, 2005, the Federal Communications Commission ("FCC") released the text of its Order on Remand in *In the Matter of Review of the Section 251 Unbundling Obligations of Incumbent Local Exchange Carriers*, CC Docket No. 01-338 ("*Triennial Review Remand Order*"). The rules adopted in the *Triennial Review Remand Order* constitute a change in law under the current interconnection agreement ("ICA") between XO<sup>1</sup> and Southwestern Bell Telephone, L.P. d/b/a SBC Texas ("SBC"). Pursuant to Section 2.1 of the Second Amendment Superseding Certain Intervening Law, Compensation, Interconnection and Trunking Provisions of that ICA, formal written notice is required to begin the process of entering into negotiations to arrive at an amendment to implement into the ICA the FCC's determinations in the *Triennial Review Remand Order*.

Accordingly, we hereby provide this notice, and request that SBC begin good-faith negotiations under Section 252 of the 1996 Telecom Act directed toward reaching a mutually agreeable ICA amendment that fully and properly implements the changes that have occurred as a result of the *Triennial Review Remand Order*. In addition, formal notice is hereby being given for purposes of again commencing negotiations on the changes in law implemented by the *Triennial Review Order* that were unaffected by the *Triennial Review Remand Order*.<sup>2</sup> We intend that the negotiations will include the effect of section 271 of the 1996 Telecom Act on SBC's ongoing obligation to provide access to certain unbundled network elements, as well as independent state authority to order unbundling.

---

<sup>1</sup> "XO," for purposes of this notice, refers to XO Communications Services, Inc., on behalf of and/or as successor in interest to XO Texas, Inc.

<sup>2</sup> The inclusion of changes in law implemented by the *Triennial Review Order* in this request should not be construed as a waiver of any right XO may have, and XO hereby reserves all such rights, to seek immediate relief for SBC's continued refusal, after months of negotiation between the parties, to implement those provisions of the TRO not affected by appeal or vacatur.



XO notes that, pursuant to Section 2.1 of the Second Amendment Superseding Certain Intervening Law, Compensation, Interconnection and Trunking Provisions of the current ICA and paragraph 233 of the *Triennial Review Remand Order*, the existing terms of the parties' ICA continue in effect until such time as the Parties have executed a written amendment to the ICA. As such, XO expects that both it and SBC will continue to honor all terms and conditions of the current interconnection agreement until such time as a written amendment is executed. Furthermore, as both SBC and XO are parties to Docket No. 28821 - Arbitration of Non-Costing Issues for Successor Interconnection Agreements to the Texas 271 Agreement, XO provides notice to SBC that it expects the parties to negotiate implementation of the *Triennial Review Remand Order*, pursuant paragraph 233 of the *Triennial Review Remand Order*, so that the resulting interconnection agreement reflects such *Triennial Review Remand Order*.

The main company contact for these negotiations is:

Gegi Leeger  
Director Regulatory Contracts  
11111 Sunset Hills Road  
Reston, VA 20190  
703-547-2109 voice  
703-547-2300 facsimile  
Email: [gegi.leeger@xo.com](mailto:gegi.leeger@xo.com)

Please initiate the internal processes within SBC that will facilitate this request, and respond to this letter as expeditiously as possible with written acknowledgement of your receipt so that we may begin the negotiation process.

Further, in order to timely incorporate the *Triennial Review Remand Order's* rules into our revised interconnection agreement, the wire centers in your operating areas that satisfy the Tier 1, Tier 2, and Tier 3 criteria for dedicated transport and DS1 and DS3 loops must be identified and verified. Accordingly, XO hereby requests that SBC provide all backup data necessary to verify the number of lines and the identity of the fiber-based collocators by end office for each end office that SBC claims fall within each tier as those tiers are defined in the *Triennial Review Remand Order*. This data should be provided by no later than Friday, February 25, 2005.

Sincerely,

A handwritten signature in black ink, appearing to read 'Gegi Leeger'.

Gegi Leeger  
Director Regulatory Contracts

EXHIBIT D

XO Communications





February 24, 2005

Gegi Leeger  
Director Regulatory Contracts  
XO Communications  
11111 Sunset Hills Road  
Reston, VA 20190

Subject: XO Communications February 18, 2005 Letters (19 letters)

Dear Gegi;

This letter is in response to your letters dated February 18, 2005, taking the position that the FCC's February 4, 2005 *TRO Remand Order* constitutes a change in law, and requesting negotiations to conform your existing Interconnection Agreement(s) (ICAs)<sup>1</sup> to the FCC's February 4, 2005 *TRO Remand Order*. Additionally, you request

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<sup>1</sup> ICAs specifically addressed in the February 18, 2005 letters received from XO Communications are: "the current interconnection agreement ("ICA") between XO Communications Services, Inc. (XO) on behalf of and/or as a successor in interest to Allegiance Telecom of Illinois, Inc. and Illinois Bell Telephone Company d/b/a/ SBC Illinois ("SBC"); XO on behalf of and/or as a successor in interest to XO Michigan, Inc. and Michigan Bell Telephone Company d/b/a/ SBC Michigan ("SBC"); XO Communications Services, Inc. on behalf of and/or as successor in interest to Allegiance Telecom of Michigan, Inc. and Michigan Bell Telephone Company d/b/a/ SBC Michigan ("SBC"); XO on behalf of and/or as successor in interest to Allegiance Telecom of Missouri, Inc. and Southwestern Bell Telephone, L.P. d/b/a SBC Missouri ("SBC"); XO on behalf of and/or as successor in interest to XO Missouri, Inc. and Southwestern Bell Telephone, L.P. d/b/a SBC Missouri ("SBC"); XO on behalf of and/or as successor in interest to XO Ohio, Inc. and Ohio Bell Telephone Company d/b/a/ SBC Ohio ("SBC"); XO on behalf of and/or as successor in interest to Allegiance Telecom of Ohio, Inc. and Ohio Bell Telephone Company d/b/a/ SBC Ohio ("SBC"); XO on behalf of and/or as successor in interest to XO Texas, Inc. and Southwestern Bell Telephone d/b/a SBC Texas ("SBC"); XO on behalf of and/or as successor in interest to Allegiance Telecom of Texas, Inc.; and Southwestern Bell Telephone, L.P. d/b/a SBC Texas ("SBC"); XO on behalf of Coast to Coast Telecommunications, Inc. and Michigan Bell Telephone Company d/b/a/ SBC Michigan ("SBC"); XO on behalf of and/or as successor in interest to XO California, Inc. and Pacific Bell Telephone Company d/b/a SBC California ("SBC"); XO on behalf of and/or as successor in interest to Allegiance Telecom of California Inc. and Pacific Bell Telephone Company d/b/a SBC California ("SBC"); XO on behalf of and/or as successor in interest to XO Arkansas, Inc. and Southwestern Bell Telephone, L.P. d/b/a SBC Arkansas ("SBC"); XO on behalf of and/or as successor in interest to XO Connecticut, Inc. and Southern New England Telephone Company d/b/a/ SBC Connecticut ("SBC"); XO on behalf of and/or as successor in interest to XO Illinois, Inc. and Illinois Bell Telephone Company d/b/a SBC Illinois ("SBC"); XO on behalf of and/or as successor in interest to XO Indiana, Inc. and Indiana Bell Telephone Company d/b/a SBC Indiana ("SBC"); XO on behalf of and/or as successor in interest to XO Kansas, Inc. and Southwestern Bell Telephone, L.P. d/b/a SBC Kansas ("SBC"); XXO on behalf of and/or as successor in interest to XO Oklahoma, Inc. and Southwestern Bell Telephone, L.P. d/b/a SBC Oklahoma ("SBC"); and XO on behalf of and/or as successor to XO Wisconsin, Inc. and Wisconsin Bell Telephone Company d/b/a SBC Wisconsin ("SBC").



negotiations to conform your ICAs to rules adopted in the *Triennial Review Order* that were unaffected by the *TRO Remand Order*. SBC will address each of the issues raised by your February 18th letter.

First, as you know, on February 11, 2005, SBC advised your company(ies) of SBC's plans to implement the TRO Remand Order, via the following four Accessible Letters: CLECALL05-017, CLECALL05-018, CLECALL05-019 and CLECALL05-020. Also on February 11, 2005, SBC announced an interim UNE-P Replacement Commercial Offering via Accessible Letter CLECALL05-016. As stated in Accessible Letters CLECALL05-018 and CLECALL05-020, SBC has already provided you with proposed language to bring your ICA(s) into conformity with the FCC's new unbundling rules, as well as the transition plans and pricing for elements that no longer need be unbundled, which will take effect on March 11, 2005. Signature-ready, printable versions of the amendments are available via the SBC CLEC Website: CLEC Online at <https://clec.sbc.com/clec>. The proposed language was derived directly from the TRO Remand Order, and thus should be implemented without delay, consistent with the Commission's admonition that the parties should not unnecessarily delay implementation of the new rules and the parties' obligation to negotiate in good faith. Accordingly, we again request that you immediately access the proposed language on CLEC-Online, print the signature-ready amendment(s), execute and return them to SBC or provide proposed modifications as soon as possible so that we may promptly reach agreement and file amendments with the appropriate state commission(s) in a timely manner.

In your letter, you do not clearly state what other issues you believe you need to negotiate with SBC in the wake of the *TRO Remand Order*. If you have additional written language proposals to make relative to the *TRO Remand Order*, separate and apart from the transition plan and pricing, please forward them to me at your earliest convenience. However, negotiation concerning such proposals should not delay timely implementation of the Commission's new unbundling rules and transition plans, which are covered by SBC's online proposed amendment. In fact, SBC will begin billing the FCC's transition pricing modifications effective March 11, 2005 in order, among other things, to accurately track amounts due from CLECs during the applicable transition periods and to allow CLECs to assess the additional amounts that will be due upon amendment of their ICA(s).

Second, SBC notes that you also have requested negotiations regarding certain rulings made in the FCC's 2003 *Triennial Review Order*. Your request is not appropriate at this time. As you are aware, on October 30, 2003, January 16, 2003 or during negotiations of successor ICAs, SBC notified your company(ies) of the issuance of the *Triennial Review Order*, and requested negotiations to conform your ICA(s) to that Order. Subsequently, on March 11, 2004 and July 13, 2004, or during negotiations of successor ICAs, SBC notified your company(ies) of the issuance of the D.C. Circuit Court of Appeals' *USTA II* decision and provided additional language to conform your ICA(s) to that decision, which vacated several of the key rulings of the *Triennial Review Order*. Notwithstanding these prior notices and amendments proposed by SBC, your company's ICA(s) have not





been conformed to those decisions and are now the subject of formal dispute proceedings in SBC's 13-state territory. Therefore, it would not be appropriate, nor is it necessary, to initiate negotiations at this time. As you are aware, SBC's proposed conforming language for the *Triennial Review Order* has been part of the public record in the state dispute resolution proceedings for months. If your company(ies) are now prepared to incorporate the language necessary to conform your existing ICA to the *Triennial Review Order*, SBC is willing to engage in settlement discussions regarding that language, in hopes that we quickly can come to agreement and dismiss your company(ies) from those proceedings. However, any such settlement discussions would in no way affect the ongoing state dispute resolution proceedings unless the parties are able to reach agreement. If you are interested in incorporating the conclusions of the *Triennial Review Order* and the *TRO Remand Order* into a single amendment, I am attaching sample amendment language for your consideration.

Next, SBC notes that you have requested negotiations regarding unbundling of certain elements under Section 271 of the Act and independent state authority. However, as SBC previously has made clear, we do not believe that states have independent authority to order unbundling of elements for which the FCC has made a finding of no impairment. Moreover, we do not agree that negotiations of amendments to conform your ICAs to the *TRO Remand Order* should encompass negotiation of section 271 elements. Rather, any such negotiations should occur outside the section 251/252 framework. SBC notes, in this regard, that negotiations are not necessarily required to comply with any unbundling requirements under section 271. For example, SBC's special access offerings provide any local loop transmission capability or local transport capability that might be required under section 271.

SBC also rejects your contention that you may continue to purchase network elements that are no longer subject to unbundling after the *TRO Remand Order* is effective on March 11 because "the existing terms of [your] ICA continue in effect until such time as the Parties have executed a written amendment to the ICA." As you know, the *TRO Remand Order*, effective on March 11, 2005, specifically provides that requesting carriers may no longer obtain new Mass Market ULS/UNE-P, DS1/DS3/Dark Fiber Loops, and DS1 and DS3 Transport where there has been a finding of non-impairment and where ILECs thus are not required to provide such elements under the new unbundling rules. The *TRO Remand Order* further establishes transition plans for the embedded base of those items. This should greatly assist your company(ies) in implementing the *TRO Remand Order*. **Please note that, notwithstanding your ICA(s), orders received for elements that have been declassified through a finding of non-impairment by the *TRO Remand Order* will not be accepted, beginning March 11, 2005, as clearly outlined in Accessible Letters CLECALL05-017 and CLECALL05-019.** The FCC's rules, effective March 11, 2005, provide that CLECs may not obtain such elements beginning on that date, and do not require contract amendments for effectuation. See §51.319(d)(2), §51.319(a)(6)(ii), and §51.319(e)(2)(iv)(B).



Finally, in your February 18th letter you also requested the identification of Tier 1, 2 and 3 information for High-Capacity Loops and Transport as applicable. This information has been posted to CLEC-Online as outlined in CLECALL05-027 and CLECALL05-031. The business line criteria used to determine the tiers is in accordance with ¶105. The fiber-based collocater criteria used to determine the tiers is based on SBC's inventory as described in ¶100 of the *TRO Remand Order*.

If you have any questions, please feel free to contact me.

Sincerely,

A handwritten signature in cursive script, reading "C. Woodard-Sullivan".

Cheryl Woodard-Sullivan  
Account Manager

Cc: P. O'Sullivan  
L. Cooper

**PROPOSED TRIENNIAL REVIEW ORDER DECLASSIFICATION AND TRO REMAND ORDER  
TRANSITIONAL AMENDMENT LANGUAGE**

WHEREAS, the Federal Communications Commission ("FCC") released on August 21, 2003 a "Report and Order on Remand and Further Notice of Proposed Rulemaking" in CC Docket Nos. 01-338, 96-98 and 98-147, 18 FCC Rcd 16978 (as corrected by the Errata, 18 FCC Rcd 19020, and as modified by Order on Reconsideration (rel. August 9, 2004) (the "Triennial Review Order" or "TRO"), which became effective as of October 2, 2003; and

WHEREAS, by its TRO, the FCC ruled that certain network elements were not required to be provided as unbundled network elements under Section 251(c)(3) of the Telecommunications Act of 1996 ("Act"), and therefore, [SBC ILEC] is no longer legally obligated to provide those network elements on an unbundled basis to CLEC under federal law; and

WHEREAS, the U.S. Circuit Court of Appeals, District of Columbia Circuit released its decision in *United States Telecom Ass'n v. F.C.C.*, 359 F3d 554 (D.C. Cir. 2004) ("USTA II") on March 2, 2004 and its associated mandate on June 16, 2004; and

WHEREAS, the USTA II decision vacated certain of the FCC rules and parts of the TRO requiring the provision of certain unbundled network elements under Section 251(c)(3) of the Act; and

WHEREAS, the FCC issued its Order on Remand, including related unbundling rules,<sup>1</sup> on February 4, 2005 ("TRO Remand Order"), holding that an incumbent LEC is not required to provide access to local circuit switching on an unbundled basis to requesting telecommunications carriers (CLECs) for the purpose of serving end-user customers using DSO capacity loops ("mass market unbundled local circuit switching" or "Mass Market ULS"), and holding that an incumbent LEC is not required to provide access to certain high-capacity loop and certain dedicated transport on an unbundled basis to requesting telecommunications carriers (CLECs);

NOW, THEREFORE, in consideration of the foregoing, and the promises and mutual agreements set forth in the Agreement and in this Amendment, the Agreement is hereby amended to ensure that the terms and conditions of the Agreement related to specific network elements made available hereunder on an unbundled basis under Sections 251(c)(3) and (d)(2) are conformed so as to be consistent with applicable federal law:

**1.1 TRO-Declassified Elements.** Pursuant to the TRO, nothing in the Agreement requires [SBC ILEC] to provide to CLEC any of the following items, either alone or in combination (whether new, existing, or pre-existing) with any other element, service or functionality:

- (i) entrance facilities;
- (ii) DSO or OCn level dedicated transport;
- (iii) enterprise market (DS1 and above) local switching (defined as (a) all line-side and trunk-side facilities as defined in the TRO, plus the features, functions, and capabilities of the switch. The features, functions, and capabilities of the switch shall include the basic switching function of connecting lines to lines, lines to trunks, trunks to lines, and trunks to trunks, and (b) all vertical features that the switch is capable of providing, including custom calling, custom local area signaling services features, and Centrex, as well as any technically feasible customized routing functions);

<sup>1</sup> Order on Remand, *Unbundled Access to Network Elements; Review of the Section 251 Unbundling Obligations of Incumbent Local Exchange Carriers*, WC Docket No. 04-313; CC Docket No. 01-338, (FCC released Feb. 4, 2005).

- (iv) OCn loops;
- (v) the feeder portion of the loop;
- (vi) line sharing;
- (vii) any call-related database, other than the 911 and E911 databases, to the extent not provided in conjunction with unbundled local switching;
- (viii) SS7 signaling to the extent not provided in conjunction with unbundled local switching;
- (ix) packet switching, including routers and DSLAMs;
- (x) the packetized bandwidth, features, functions, capabilities, electronics and other equipment used to transmit packetized information over hybrid loops (as defined in 47 CFR 51.319 (a)(2)), including without limitation, xDSL-capable line cards installed in digital loop carrier ("DLC") systems or equipment used to provide passive optical networking ("PON") capabilities; and
- (xi) fiber-to-the-home loops and fiber-to-the-curb loops (as defined in 47 C.F.R. § 51.319(a)(3)) ("FTTH Loops" and "FTTC Loops"), except to the extent that [SBC ILEC] has deployed such fiber in parallel to, or in replacement of, an existing copper loop facility and elects to retire the copper loop, in which case [SBC ILEC] will provide nondiscriminatory access to a 64 kilobits per second transmission path capable of voice grade service over the FTTH Loop or FTTC Loop on an unbundled basis to the extent required by terms and conditions in the Agreement.

## 1.2 TRO Remand-Declassified Elements (Mass Market Unbundled Local Switching and UNE-P)

- 1.2.1 Notwithstanding anything in the Agreement, pursuant to Rule 51.319(d) as set forth in the TRO Remand Order, effective March 11, 2005, CLEC is not permitted to obtain new Mass Market ULS, either alone or in combination (as in with "UNE-P"). Accordingly, pursuant to Rule 51.319(d)(2)(iii), although [SBC ILEC] shall continue to provide access to Mass Market ULS or Mass Market UNE-P to CLEC for CLEC to serve its embedded base of end-user customers (i.e., only Mass Market ULS or Mass Market UNE-P ordered by CLEC before March 11, 2005), the price for such Mass Market ULS and UNE-P shall be the higher of (A) the rate at which CLEC obtained such Mass Market ULS and UNE-P on June 15, 2004 plus one dollar, or (B) the rate the applicable state commission established(s), if any, between June 16, 2004, and March 11, 2005, for such Mass Market ULS and UNE-P, plus one dollar. For purposes of this Paragraph, "Mass Market" shall mean 1 – 23 lines, inclusive (i.e. less than a DS1 or "Enterprise" level.) CLEC shall be fully liable to [SBC ILEC] to pay such pricing under the Agreement, including applicable terms and conditions setting forth penalties for failure to comply with payment terms, notwithstanding anything to the contrary in the Agreement.
- 1.2.2 CLEC will complete the transition of embedded base Mass Market ULS and Mass Market UNE-P to an alternative arrangement by the end of the transition period defined in the TRO Remand Order (i.e. by March 11, 2006).
- 1.2.3 Paragraphs 1.2.1 and 1.2.2, above, apply and are operative regardless of whether CLEC is requesting Mass Market ULS or Mass Market UNE-P under the Agreement or under a state tariff, if applicable, and regardless of whether the state tariff is referenced in the Agreement or not.

## 1.3 TRO Remand Declassified Elements (High-capacity Loop and Transport)

- 1.3.1 Notwithstanding anything in the Agreement, pursuant to Rule 51.319(a) and Rule 51.319(e) as set forth in the TRO Remand Order, effective March 11, 2005, CLEC is not permitted to obtain the

following new unbundled high-capacity loop and dedicated transport elements, either alone or in combination:

Dark Fiber Loops;

DS1/DS3 Loops in excess of the caps or to any building served by a wire center described in Rule 51.319(a)(4) or 51.319(a)(5), as applicable;

DS1/DS3 Transport in excess of the caps or between any pair of wire centers as described in Rule 51.319(e)(2)(ii) or 51.319(e)(2)(iii), as applicable; or

Dark Fiber Transport, between any pair of wire centers as described in Rule 51.319(e)(2)(iv).

The above-listed element(s) are referred to herein as the "Affected Element(s)."

1.3.2 Accordingly, pursuant to Rules 51.319(a) and (e), although [SBC ILEC] shall continue to provide CLEC's embedded base of the Affected Element(s) (i.e., only Affected Elements ordered by CLEC before March 11, 2005), if and as provided by the Agreement, the price for the embedded base Affected Element(s) shall be the higher of (A) the rate CLEC paid for the Affected Element(s) as of June 15, 2004, plus 15% or (B) the rate the state commission has established or establishes, if any, between June 16, 2004 and March 11, 2005 for the Affected Element(s), plus 15%. CLEC shall be fully liable to [SBC ILEC] to pay such pricing under the Agreement, including applicable terms and conditions setting forth penalties for failure to comply with payment terms, notwithstanding anything to the contrary in the Agreement.

1.3.3 CLEC will complete the transition of embedded base Affected Elements to an alternative arrangement by the end of the transition period defined in the TRO Remand Order (12 or 18 months from the TRO Remand Order's effective date, as applicable). For Dark Fiber Affected Elements, CLEC will remove all CLEC services from such Dark Fiber Affected Elements and return the facilities to [SBC ILEC] by the end of the transition period defined in the TRO Remand Order for such Dark Fiber Affected Elements.

1.3.4 Paragraphs 1.3.1 and 1.3.2, above, apply and are operative regardless of whether CLEC is requesting the Affected Element(s) under the Agreement or under a state tariff, if applicable, and regardless of whether the state tariff is referenced in the Agreement or not.

2.1 [INTENTIONALLY LEFT BLANK]

3.1 **Notice and Transition.** In addition to the network elements identified in this Amendment as being no longer subject to unbundling under the Agreement, if the FCC determines that one or more additional network elements are no longer required to be unbundled under Section 251(c)(3), then [SBC ILEC] is not required to provide the element(s) on an unbundled basis, either alone or in combination (whether new, existing, or pre-existing) with any other element, service or functionality, to CLEC under this Agreement, and the following notice and transition procedure shall apply:

3.1.1 [SBC ILEC] will provide written notice to CLEC of the fact that the network element(s) and/or the combination or other arrangement in which the network element(s) had been previously provided on an unbundled basis is no longer required to be provided. During a transitional period of thirty (30) days from the date of such notice, [SBC ILEC] agrees to continue providing such network element(s) under the terms of this Agreement.

3.1.1.1 Upon receipt of such written notice, CLEC will cease new orders for such network element(s) that are identified in the [SBC ILEC] notice letter. [SBC ILEC] reserves the right to monitor, review, and/or reject CLEC orders transmitted to [SBC ILEC] and, to the extent that the CLEC has submitted orders and such orders are provisioned after this 30-day transitional period, such network elements are still subject to this Paragraph 3.1, including the CLEC options set forth in subparagraph 3.1.1.2 below, and [SBC ILEC]'s right of conversion in the event the CLEC options are not accomplished by the end of the 30-day transitional period.

3.1.1.2 During such 30-day transitional period, the following options are available to CLEC with regard to the network element(s) identified in the [SBC ILEC] notice, including the combination or other arrangement in which the network element(s) were previously provided:

(i) CLEC may issue an LSR or ASR, as applicable, to seek disconnection or other discontinuance of the network element(s) and/or the combination or other arrangement in which the element(s) were previously provided; or

(ii) [SBC ILEC] and CLEC may agree upon another service arrangement (e.g. via a separate agreement at market-based rates or resale), or may agree that an analogous resale service or access product or service may be substituted, if available.

Notwithstanding anything to the contrary in the Agreement, including any amendments to the Agreement, at the end of the thirty (30) day transitional period, unless CLEC has submitted a disconnect/discontinuance LSR or ASR, as applicable, under subparagraph 3.1.1.2(i), above, and if CLEC and [SBC ILEC] have failed to reach agreement, under subparagraph 3.1.1.2(ii), above, as to a substitute service arrangement or element, then [SBC ILEC] will convert the subject element(s), whether alone or in combination with or as part of any other arrangement to an analogous resale or access service or arrangement, if available, at rates applicable to such analogous service or arrangement.

4.1 Nothing in this Amendment shall affect the general application and effectiveness of the Agreement's "change of law," "intervening law," "successor rates" and/or any similarly purposed provisions. The rights and obligations set forth in this Amendment apply in addition to any other rights and obligations that may be created by such intervening law, change in law or other substantively similar provision.